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Relevant Docket Entries

June 17, 1949 Served decree on Defl Union. so ent. B. A. W. Jr. Ent 6 cpy pl.

June 27, 1949 Exceptions to decree and motion for extension of time for filing exceptions, also order extending time to file exceptions 30 days after transcription of testimony, filed.

June 28, 1949 Testimony filed.

July 27, 1949 Additional exceptions filed.

June 28, 1950 Defts Exceptions and additional exceptions overruled, and order filed.

July 12, 1950 On motion and order filed July 19, 1950 set for final hearing.

July 18, 1950 Testimony on Final Hearing filed to No. 1858 Equity Dkt.

Aug. 1, 1950 On Motion filed, Aug. 9, 1950 set for hearing, and order filed.

Aug. 28, 1950 Continued Testimony on Final Hearing filed to 1858.

Oct. 11, 1950 Defts requests for Findings of Fact and conclusions of law filed.

Nov. 11, 1950 Defts briefs filed.

Nov. 15, 1950 Pltf's brief filed, record to Court.

Sept. 6, 1951 It is ordered, adjudged and decreed that Defts are permanently enjoined from publishing and selling Pltf's copyrighted Book and Music Cue entitled entertainment Numbers for Community Sings and Social Gatherings, and from infringing Pltf's copyrights of decree to all persons, and that within 10 days filed decree with D. Attorney and Defendants and decree ent. Ent.

Sept. 10, 1951 Defts Exceptions filed.

Nov. 5, 1951 Notice filed.

Nov. 15, 1951 Pltf's brief filed. Case argued before Judges Smith, Kiely and Rohn, record to Court.

March 3, 1952 Defts exceptions dismissed and Judg-

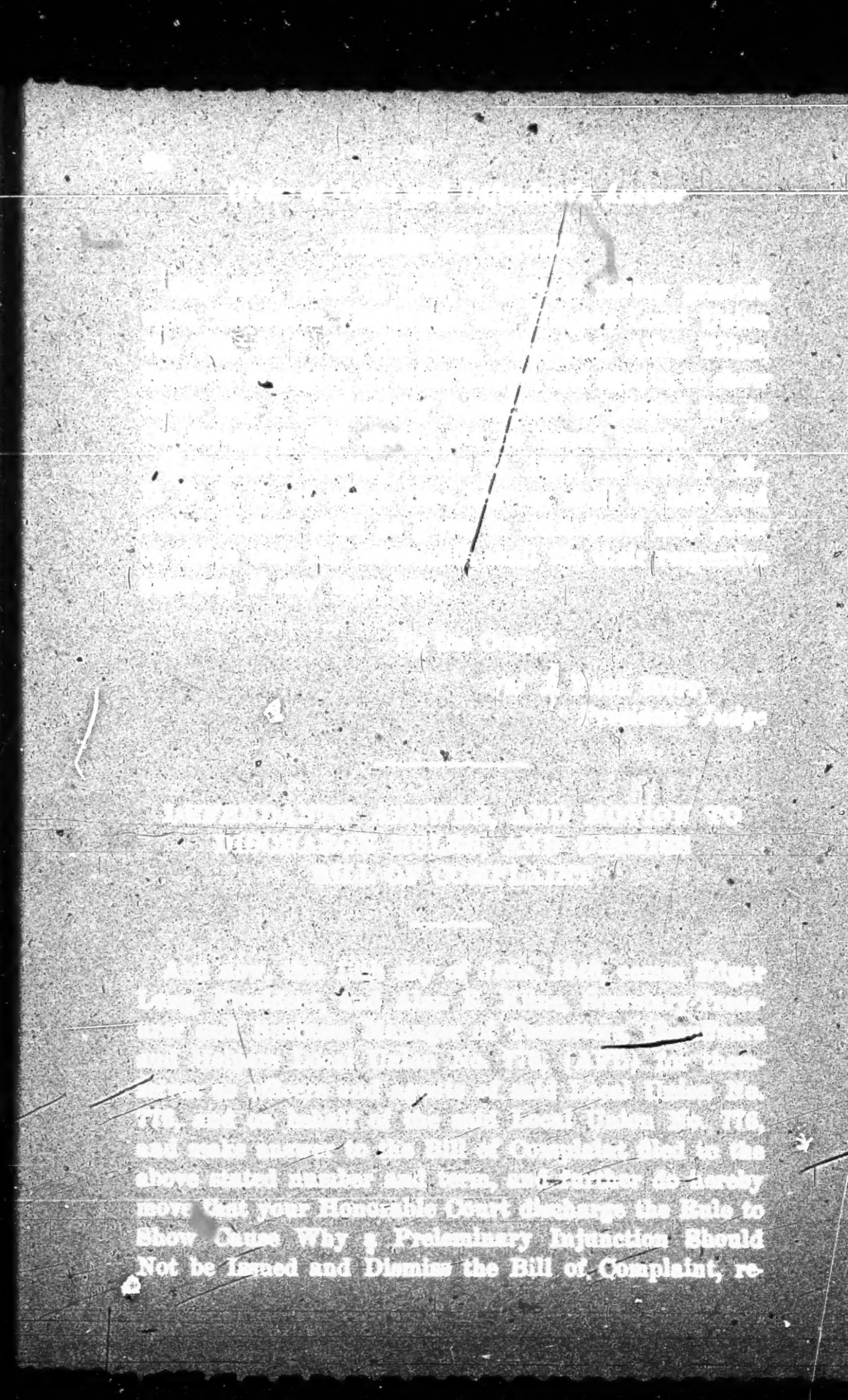
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ment entered in accordance with decree nisi of Sept. 4, 1951.

March 25, 1952 Affidavit of Service filed.

March 25, 1952 Certified cur Appeal No. 25 May Term, 1952 from Supreme Court received and filed.

March 25, 1952 Statement of Questions to be argued filed.



move that your Honorable Court discharge the Rule to Show Cause Why a Preliminary Injunction Should Not be Issued and Dismiss the Bill of Complaint, re-

8. Paragraph 8 of the Bill of Complaint is admitted subject to the same allegation as is set forth in Paragraph 7 hereof.

9. Paragraph 9 of the Bill of Complaint is admitted.

Defendants' Answer

10. Paragraph 10 of the Bill of Complaint is a mere conclusion and is not such an averment of fact as to be susceptible of an answer. However, Defendants deny each and every such averment as alleged in the Bill of Complaint. Defendants further say that they have done nothing except picket and that the picketing has at all times been conducted in a peaceful manner for the sole purpose of appealing to the employees of Plaintiff Company to join the Defendant Union to gain union wages and working conditions; and that such picketing is a lawful exercise of the right of freedom of speech as guaranteed by the Constitutions of the Commonwealth of Pennsylvania and the United States; and further, that unionized truck drivers and helpers employed by Heron Motor Express, Nelsons Express, Motor Cargo, Inc., Reading Transportation Co., Lancaster Transportation Co., Rhinehart Motor Express, York Motor Express, and Daily Motor Express, have passed the said picket line without let or hindrance. And further, that the loss of Plaintiff's business, if any, is not actionable nor is Plaintiff entitled to the relief prayed for because Defendants' conduct and activity is lawful and proper.

12. For further answer to the Bill of Complaint and in support of Defendants' Motion to Discharge the Rule

Defendants' Answer.

and Dismiss the Bill of Complaint, the Defendants further allege that the Bill of Complaint fails to allege facts constituting a cause of action within any of the exceptions to the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended, and particularly as set forth in Section 4 thereof, and the said Bill of Complaint does not contain the necessary averments which are essential conditions precedent to the granting of an injunction under said Act.

Wherefore, it is respectfully prayed that your Honorable Court discharge the rule granted June 9, 1949, upon Defendants to show cause why a preliminary injunction as prayed for should not be issued and that the said Bill of Complaint be dismissed with costs assessed upon the Plaintiff therein.

And they will ever pray.

TEAMSTERS, CHAUFFEURS & HELPERS
LOCAL UNION No. 776

/s/ EDGAR LONG,
President.

/s/ ALAN E. KING,
Business Manager.

State of Pennsylvania
County of Dauphin ss:

Personally appeared before me a Notary Public in and for said State and County, Ed Long, who being duly sworn according to law deposes and says that he is President of Local No. 776 of the Teamsters, Chauffeurs and Helpers Union (AFL), and that he is authorized to make this affidavit, and that the facts set forth

[illegible]

Defendant's Answer

[illegible]

/s/ Elmira Lowe

/s/ Alex H. Kiern

Sworn and subscribed to before me this 18th day of June, 1965.

/s/ Margaret Z. Hayford,
Notary Public (Seal)

My commission expires Feb. 1, 1968.

[illegible]

[illegible]

[illegible]

Hearing on Motion for Preliminary Injunction

IN

EQUITY.

HEARING ON MOTION FOR PRELIMINARY INJUNCTION.

Tuesday, [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

June 11, 1918, in Court Room No. 1, Los Angeles County Court House, at 9 o'clock A. M.

Appearances:

For Central Storage & Transfer Co.: David S. Kohl, Esq.

For Geo. W. Weaver & Son, Inc.: Morse, Hinsley & Reynolds, By: James W. Reynolds, Esq.; William W. Lipsitt, Esq.

For Defendants: Messrs. Douglass & Handler, By: Sidney G. Handler, Esq.; Roland T. Douglass, Esq.

THE COURT (Judge Smith): Gentlemen, there was a Bill in Equity filed and Defendants' Answer and Motion to Discharge Rule and to Dismiss Bill of Com-

to determine whether or not a preliminary injunction should not issue.

Paragraph 4 of the plaintiffs' statement:

Q. Where in that location, where is the pasture, you are talking about located?

A. [illegible] of the Reading Transportation Company, December 10, 1901.

Q. In connection with the freight that comes in

alleys back of the main streets, and we unload that and deliver it by smaller tractor into these different places. We have five trucks operating out of the terminal in all directions covering the entire city.

Q. Has this distribution you are talking about been

A. We have lost practically 90% of that business.

Q. Now, I call your attention to—

THE COURT (Judge Smith): You might develop why it was lost.

MR. KOHN: What?

THE COURT (Judge Smith): You might develop why it was lost.

MR. KOHN: That is what I am going into now.

Q. Was any merchandise come through your platform and your terminal and your business since June 7th, since this picketing has been at this location, from the Reading Transportation Company?

A. Wednesday morning, June 8th, they delivered a State truck job, a small truck about two-ton load, and also a trailer-load in the morning of June 8th, and that merchandise was turned over to us and we made imme-

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

Hearing on Motion for Preliminary Injunction
Joseph Garner—Direct

A. Because I noticed a number of trailers stopping at the gateway and they kept on going, they never attempted to enter it much the time. I called him again, practically the same conversation was made, 'I don't see any harm from that.' I said, 'The trailers are turning back and coming through?' He said, 'I don't think any harm will come of it.' That is the way it was the second time.

Q. You may state whether or not you attempted to elicit from him why they were picketing this terminal rather than your main office?

A. I recall stating during the conversation that, 'You know, Mr. Kline, our place of business, our company owns a building at 11th and State Street, where our men report in, and,' I said, 'why don't you go down in front of our property which we own, rather than at the Reading Company? We don't own this place of business.' He said practically the same thing, 'No harm come from it.'

Q. Since June 7th of 1949 has that picketing continued up there until the present date, at your platform there?

A. Every day eight to five.

Q. Has this same situation continued in regard to the failure of the other truckers and Reading Transportation Company to come in?

A. With a very few exceptions we have practically been shut off from business since June 7 to the present time, and it is continuing right now.

Q. Approximately how many trailer-loads that your business has to dispose of per day?

A. I would say approximately ten to twelve trailers large trailer-loads of merchandise.

Q. How much poundage is that per day?

A. Approximately a quarter of a million pounds, 250,000 to 300,000 pounds a day has been handled at our platforms.

Q. What revenue do you estimate that?

A. I would say from four to five hundred dollars a day.

Q. Besides the financial loss and loss of business, what other loss have you suffered?

A. We have solicited this business for a period of thirty years, and I am sure we have created goodwill amongst our customers, I know that business from the inception and there have been shipments diverted to other sources. It is a question whether that business will ever come back.

Q. Is that a highly competitive business?

A. Oh, yes.

Q. And there are other people in the same business as you that can take care of this business if you lose it?

A. That is right.

Q. Are they in the particular locality in which you serve?

A. That is right.

Q. Now, in regard to what will happen, if this continues, Mr. Garner, in regard to your men?

A. I carried through our entire force the first week, inasmuch as we have filed this petition, which, if this continues, I will be absolutely forced to lay off at least twelve men and take off the wheels, probably that many trucks, because I have had idle men during the week doing nothing, and I have been carrying them, hoping that something will be done about it.

Q. These other truckers that come in, such as Hall's and Hartman's and Reading Transportation Company,

and numerous others you have mentioned, are they unionized or not?

A. So far as I know, they are all unionized.

Q. And the greater percentage of those trucks refused to cross this picket line?

A. I don't see them, they don't come in.

Q. Previous to that time have they come in?

A. Every day we have had fifteen of those truckers coming into our platform, you could pretty near set your watch on the time schedule.

Q. What calls, if any, have you received in regard to this, business telephone calls?

A. I have received numerous calls from customers of ours wanting to know whether we are on strike and why we can't pick up their shipments to be transferred to outside truckers. I gave them the story that they refused to come in. We can't handle the business.

Q. What indications have you had from the Reading Transportation Company in regard to whether or not they would continue or discontinue shipping to you pending this picket line staying or not staying there?

A. I was advised that no shipments from the Reading Transportation Company will be turned over to us while the pickets are there.

Q. And approximately how much of your business does that consist of during the course of a year?

A. Well, that is a very nice volume, I would say approximately, oh, around $3,000 worth of hauling.

Q. I call your attention to Shirk's Motor Express, how often do they come a week?

A. Every day.

Q. Since pickets have been on, have you received any shipments from the Shirk's Motor Express?

A. Yes, we receive shipments by one driver.

Joseph Hoover—Direct

Q. How many drivers?

A. There are three and four and five come in, only one man that came in and delivered freight inside during this period.

Q. What were you advised by the Shirk's Motor Express whether or not they would continue any shipments pending the outcome of this proceeding?

A. I haven't been advised, the only thing I know, nothing has been coming through.

Q. Have the Shirk's men pulled up to platform and delivered anything?

A. This one man came through the picket lines and we have received freight from him, but the rest stop at the picket and the picket walks up to them. I don't know what they say. The truck pulls out. That is the last we see of them.

Q. Does the truck drop off anything?

A. No.

Q. After talking to the picket, it leaves?

A. It leaves right away.

Q. What about the Lancaster Transportation Company, how often do they come in?

A. They come in daily regularly, about once a day.

Q. What did you see the man do?

A. The same thing as I see with him.

Q. What do you mean by that?

A. The truck, I notice the different times the pickets talk to the driver, they stop, and then they pull away, and that is the last we see of that truck.

Q. Does that constitute any part of your business?

A. The Lancaster Transportation Company is a very small part of the business, small item.

Q. What about New Pennsylvania Motor Express?

A. The same is true, also, that is a small part.

receive freight
Q. While you are on that subject, will you tell the Court how that operates, that particular part of your

A. Yes, sir.

Q. Do you recall the Court in Judge Berg's case, that that driver was not a member of the union?

A. No.

of transportation from the point of origin to the point

Mr. [illegible]: I don't wish to prolong it. I will withdraw that.

Q. [illegible]

A. Yes, I am familiar with that.

Q. State whether or not your scale of wages is lower or higher than Union wages?

Hearing on Motion for Preliminary Injunction
(Direct—Rudnick—Berman)

A. Our wages are much more higher than Union wages in the City of Greenville.

Q. Do you have any objection to any of your men working for Local 169 [illegible] or all of them?

A. [illegible] any objection.

Q. Do you know whether or not the Union has already made an attempt to unionize your men?

A. About fifteen years ago they asked me to join in with them, but I don't want to go in with them. I talked to Mr. [illegible], I think his name was.

Q. Did you have any objection at that time?

A. No, I left it up to my men to join or not to join, although I did want them to join because that is their job.

Q. Did you attempt a meeting of your men with the union representatives at your place of business?

A. Yes, they came out to speak to my men, and I told it was all right with me. They arranged a meeting at the school [illegible]. That was approximately fifteen years ago, and nothing ever came of it, I never could what happened.

Further Examination

BY MR. HANDLER:

Q. Are you familiar with all the union working conditions that prevail under union contract?

A. I would say.

Q. The overtime provisions?

A. Yes.

Q. Holiday provisions?

A. Yes.

Q. Premium pay provisions?

A. That I am not familiar with.

Q. Provision for compensation for discharge and pickup of freight?

A. We didn't get into that.

Q. Provision for compensation for breakdown time?

A. No, I wouldn't say I am familiar with that.

Q. Provision for vacations?

A. Vacations, yes.

Q. You are familiar with all those?

A. I think the majority of the conditions.

Q. Do each and every one of those conditions obtain in your plant?

A. We have more conditions than the union offers at the present time.

Q. You do have?

A. We have a lot because conditions, as I say, other conditions the union don't cover. We have job protection because, [illegible] the union has this clause of one man. You understand that. Our conditions are different here. We [illegible] I work with them. I am here [illegible] day, and all that problem [illegible] my family problems, [illegible] money, they come to me. I do all [illegible] most employees don't operate the same as members. Our conditions are different.

Q. Mr. Gerace, are you aware of the fact that the union maintains facilities for handling money by its members?

MR. KOHN: Just a minute, I think we are getting into collateral matters.

THE COURT (Judge Smith): Yes, he has gone far enough on his cross-examination.

Hearing on Motions for Preliminary Injunction
R. G. Mowrey—Direct

R. G. MOWREY, having been duly sworn according to law, was examined as follows:

Direct Examination

BY MR. KOHN:

Q. Mr. Mowrey, can you hear me?

A. I can hear you.

Q. Your name is R. G. Mowrey?

A. Yes, sir.

Q. What is your business, Mr. Mowrey?

A. I run express from New Cumberland, West Shore, and Harrisburg; West Shore Express.

Q. How long have you been in that business?

A. About 30 years, maybe.

Q. Have you visited the place of business of Mr. Garner at 9th and Market Streets?

A. Practically twice a day for the last 30 years.

Q. How often have you visited it since June 7th in a business capacity?

A. One truck drove in on June 7th—Tuesday morning? June 7th on—drove in the first morning, and picket stopped him and asked him what he was going to do. He said he had some stuff for Central Storage—

MR. HANDLER: Now, if the Court please, is the witness testifying from his own knowledge?

A. I testified from my driver reporting to me.

MR. HANDLER: I object to hearsay testimony.

THE WITNESS: O.K.

THE COURT (Judge Rupp): We admit it is hearsay, but the witness can tell us what he knows.

Hearing on Motion for Preliminary Injunction
R. G. Mowrey—Direct

Q. Did you see the picket there, Mr. Mowrey, did you see it yourself?

A. I saw them the other day, the—on the 3th; I went along with my son over to Harrisburg, and we went there.

Q. After your driver had this trouble, did you call Mr. Kline?

A. Yes.

Q. Can you give us the gist of the conversation?

MR. HANDLER: Not the gist; the entire conversation.

A. I called Mr. Kline, I won't say what day it was. I think it was the second day, and I said: "Mr. Kline, what is going on over at Central Storage?" And Mr. Kline said: "Well, we have an advertising campaign on now here, we want Central Storage to join our Union."

Q. Wanted who to join the Union?

A. "Central Storage men to join the Union." I said, "How about my drivers going through there?" "Well," he said, "we don't tell them not to go through, but," he said, "if you go through you will embarrass the pickets."

MR. HANDLER: What is that?

A. "You will embarrass the pickets if your drivers —may make on Union men, if they drive through they will embarrass the pickets." I said: "Mr. Kline, every day that my trucks don't go through I am losing money, because I do quite a lot of business with Mr. Garner of the Central Storage." "Well," he still said: "it will embarrass the pickets." I told the drivers: "It is up to you fellows"; and we haven't gone through.

BY MR. HOWE:

Q. Are these Union men you employ?
A. Sir?
Q. Are these Union men you employ?
A. My men?
Q. Yes.
A. Yes.
Q. Have you made any deliveries or gotten anything through to this regard?
A. Not since the first day.
Q. You weren't able to continue the business, it would otherwise [illegible]?
A. It would embarrass the picketing. I told the drivers when I was out and the brotherhood boys, and they told their people I would. So I said: "It is up to you [illegible] business and are doing the driving."
Q. Up to GAF that you dealt with the General Storage for 30 years uninterruptedly, is that correct?
A. Yes, sir.

Cross Examination

BY MR. HANDLER:

Q. Mr. Howe told you it was up to you whether or not the men should go through, didn't he?
A. He left it would embarrass the picketing.
Q. He left it was up to you to decide?
A. Up to the drivers.
Q. Whether to go through?
A. Up to the drivers.

GILBERT T. MARIANO, having been duly sworn according to law, was examined as follows:

Direct Examination

BY MR. KOHN:

Q. Where do you live?

A. Hummelstown.

Q. Where do you work?

A. Pierce-Pa Ipe, 25 South 10th.

Q. That is right opposite Mr. Garner's terminal?

A. Yes.

Q. What can you tell us in regard to the going in and coming out of trucks, previous to June 7, was there any trouble there?

A. Yeah, Mr. Garner picked up the freight for Harding Company, the General Storage, but not the Harding Transportation Company.

Q. Where is the Harding Transportation Company taking their stuff now since June 7th, since the picket line went up there?

A. Down there Tuesday they have been parking into the station, they have been picking up on Dauphin Shipment at Dock over there.

Q. Have you seen any trucks going in for the Harding?

A. No, because Garner's entrance is the one I seen any cabs, and I only look directly across.

Q. Have the trucks been going in and coming out?

A. I haven't seen any trucks going out the terminal.

Q. You have seen them coming in, though?

A. Directly opposite me looking there.

Q. Have you seen any truck drivers talking to pickets?

A. No, I can't say that I have.

MR. KOHN: Cross-examine.

MR. HANDLER: No questions.

BY MR. [redacted]:

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. You were asked [redacted] relative to [redacted] after June 7th when the pickets were placed [redacted] at 9th and Market Streets?

A. On June 7th our trucks were dispatched in there the regular procedure. The driver of the truck called the terminal and advised us there was a picket line

went in?

A. That is right

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MR. LAVERTY: I am willing to agree if he were to testify that that is what he would say.

Q. What was the—did you have any conversation with the pickets?

BY MR. ROSEN:

Q. What is your name?

A. George W. Gardner, Jr.

Q. Where do you live?

A. Harrisburg, Pennsylvania.

Q. For whom do you work?

Q. [illegible] you were [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible] but you were told the [illegible] Tuesday?

A. [illegible]

Q. [illegible]

A. [illegible] six days a week.

Q. [illegible] six days a week. After June 7 how [illegible] did you do?

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. Who in your company told you to stay out?

A. [illegible]

Q. What is his name?

A. Dick Holmes.

Q. What position does he hold in Shirt's Express?

A. I do not know.

Q. Did he tell you how long you were to stay out?

A. No.

Q. Just told you to stay out?

A. That is right.

MR. KOHN: Cross-examine.

MR. HANDLER: No questions.

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

[illegible] for Preliminary Injunction

[illegible] Burt Snyder--Direct

LANDIS GIST, having been duly sworn according to law, was examined as follows:

Direct Examination

BY MR. KOHN:

Q. Your name is Landis Gist?

A. Yes, sir.

Q. You are working for the Daily Motor Express?

A. Yes, sir.

Q. Previous to June 7th did you go into the Central Storage and Transfer platform?

A. Yes.

Q. During that time have you been in at all?

A. No, sir.

Q. Why not?

A. Well, the other guy wouldn't go in, and I didn't think I should go in.

Q. What?

A. The other driver didn't go in, so I didn't go in.

Q. What is because the picket was there?

A. Yes, sir.

MR. KOHN: Cross-examine.

MR. HANDLER: No questions.

BURT SNYDER, having been duly sworn according to law, was examined as follows:

Direct Examination

BY MR. KOHN:

Q. Your name is Burt Snyder?

A. That is right.

Q. Where do you live?

A. No, sir.

Q. Did you get the impression from the picket line that there was some kind of controversy between this union and the employers or its employees?

A. You would presume there would be.

Q. You presumed that, is that right?

A. That is right.

MR. KOHN: Cross-examine.

MR. HANDLER: No questions.

MR. KOHN: We close our testimony.

MR. LIPSETT: I am asking to amend the caption of this case to George W. Weaver and Son, Incorporated.

MR. HANDLER: No objection.

MR. LIPSETT: Paragraph 1 of the Bill of Complaint has been admitted in your answer?

MR. HANDLER: Yes.

MR. LIPSETT: Paragraph 1 of the Bill of Complaint reads as follows:

"1. The plaintiff, George W. Weaver, Inc., is a corporation duly incorporated and now existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal office and place of business at 102 N. Front Street, Steelton, Dauphin County, Pennsylvania, and is engaged inter alia, in the trucking and storage business in Dauphin County."

MR. LIPSETT: Paragraph 2 of the Bill of Complaint has been admitted?

MR. HANDLER: Yes.

MR. LIPSETT: Paragraph 2 of the Bill:

"2. The defendant, Teamsters, Chauffeurs and Helpers Local Union No. 776 (AFL), with offices at No. 101 Pine Street, Harrisburg, Dauphin

County, Pennsylvania, is a local unincorporated unit of the American Federation of Labor; Ed Long is its President and Allen Kline is its business manager."

MR. LIPSITT: Paragraph 2 has been admitted?

MR. HANDLER: Yes.

MR. LIPSITT: Paragraph 3 of the Bill reads as follows:

"3. Plaintiff is the employer of twenty-five (25) employees in the conduct of its business, who are classified as truck drivers."

MR. LIPSITT: Paragraph 4 has been admitted?

MR. HANDLER: That is correct.

MR. LIPSITT: Paragraph 4 reads as follows:

"4. At no time herein referred to has any of the employees mentioned in Paragraph 3 been a member of any union."

MR. LIPSITT: Now, Paragraph 5, you haven't admitted that?

MR. HANDLER: I will make the same stipulation.

MR. LIPSITT: Yes.

MR. HANDLER: For the purpose of the record we stipulate and agree that there was no controversy between the plaintiff and its employees concerning the wages, hours or working conditions.

MR. LIPSITT: No. 6 is admitted?

MR. HANDLER: Yes.

MR. LIPSITT: No. 6 of the Bill reads as follows:

Hearing on Motion for Preliminary Injunction
Direct Examination—Dimond

eg. Local No. 776 represents none of plaintiff's employees."

MR. LIPSETT: No. 7 is admitted?

MR. HANDLER: Yes.

MR. LIPSETT: No. 7 of the Bill reads as follows:

"7. No question concerning representation of plaintiff's employees has been raised or exists."

MR. LIPSETT: No. 8 is admitted?

MR. HANDLER: Yes.

MR. LIPSETT: No. 8 reads as follows:

"8. Neither the Union, its officers or any of its agents has ever requested the plaintiff to enter into negotiations with it concerning the representation of plaintiff's employees."

MR. LIPSETT: No. 9 is admitted?

MR. HANDLER: Yes.

MR. LIPSETT: No. 9 of the Bill and Answer reads as follows:

"9. Beginning on or about June 7th and continuing presently, the said labor organization through its officers and/or agents have been picketing or caused to be picketed, a place of employment of the plaintiff."

"9. Paragraph 9 of the Bill of Complaint is admitted as alleged. For further and complete answer thereto, defendants aver that such picketing has at all times been conducted by no more than one picket and in a peaceful manner and only for organizational purposes."

MR. LIPSITT: Now, of course, No. 12 is considered a conclusion.

CHARLES B. WEAVER, having been duly sworn according to law, was examined as follows:

Direct Examination

BY MR. DEPUTY:

Q. Will you give me your name?

A. Charles B. Weaver.

Q. What home address?

A. 539 North Front Street, Steelton.

disputes or controversy between the employers and
its employes?

A. Never.

Q. Have you ever, or, if you know if any other

-5-

[illegible]

A. [illegible]

Q. You say you receive goods from both Pierre, Vale Railroad and from other connecting lines in that terminal?

[illegible]

[illegible]

[illegible]

Q. Is it continuing at the present time?

A. Yes, sir.

Q. Can you give us any specific instances of refusal by people to pick up from your platform at the Pennsylvania Railroad terminal?

Q. Now, Mr. [illegible], when you called for those goods, what did you say to [illegible]?

A. I told him I was sorry, we called for goods.

Q. Normally, when would those goods have been distributed?

A. Monday.

Q. And it stayed there for three days?

A. That is right.

Q. Is there any other specific instance that you can remember when any truck line refused to come in to pick up anything from your platform?

Cross Examination

BY MR. HANDLER:

Q. Your interchange is with lines that originate outside of the State, is it not?

[illegible] for Preliminary Injunction
[illegible] H. Wood—Direct

A. [illegible]

Q. [illegible] between the final act of delivering the [illegible] to local consignees in this [illegible]?

A. [illegible]

Q. [illegible] you are engaged in interstate commerce?

A. [illegible]

Q. Consequently you are engaged in interstate commerce, aren't you?

A. [illegible]

Q. You [illegible] charge with the State Motor Rate [illegible] on June 10th substantially to what you alleged in your Bill of Complaint here, did you not?

A. [illegible]

Q. Now, do you remember you filed a financial statement or an annual report with the Public Utility Commission for a period ending December 31, 1948, did you not?

A. We did.

Q. What is the ratio between your operating revenues and your operating costs for the year 1948?

MR. LITTLETON: I must object to that, your Honor, that doesn't have anything to do with this case, what happened last year.

THE COURT (Judge Rupp): What is your purpose?

MR. HANDLER: What I am trying to find out is the ratio between the operating revenues and operating cost.

THE COURT (Judge Rupp): What is the purpose?

MR. HANDLER: The purpose is, the witness has testified that the freight loss is approximately, gross

volume, $100 a day, which will result in him having to lay off approximately six people, and let us say that involves six trucks. It is a matter pretty well known that operating net ratio, he has net ratio somewhere around six per cent, which would mean the loss would be $6.00 a week, which is highly inconsistent with laying off of the men and so much equipment. I think it goes to the witness' credibility.

MR. LIPSITT: We are going to object to that.

THE COURT (Judge Smith): We will receive it subject to the objection.

(Discussion off the record.)

MR. HANDLER: I will waive that question; the report will speak for itself.

Q. No representative of the union spoke to you on or prior to June 7, 1949, prior to picketing, no representative of the union spoke to you, did they?

A. Well, when I previously testified.

Q. In 1943?

A. Yes, sir.

Q. You haven't spoken to a union representative since then?

A. I don't know the union representatives.

Q. You don't know the union representatives?

A. No.

Q. You haven't spoken to a union representative since 1943, is that a fact?

A. No, I haven't spoken to any, I don't know them, I wouldn't know them to speak to.

MR. HANDLER: That is all.

MR. LIPSITT: It won't be necessary to call this

Hearing on Motion for Preliminary Injunction
Charles E. Weaver—Direct

witness, Mr. Charles E. Morrett, an employee of Weaver Company, 608 North Front Street, Steelton, if called, Mr. Morrett would testify that he called both the Hartman and the Daily Motor Express and asked them to pick up items of goods from the platform of the Pennsylvania Railroad, and that both of them refused. Mr. Cockley, of Hartman's Transportation Company, the driver, he refused to come in. Mr. Cockley asked him if it was similar to the Central Storage matter, and he was informed it was.

MR. HANDLER: He spoke to Mr. Cockley, a driver for Hartman's?

MR. LIPSITT: That is right.

MR. HANDLER: He asked him whether the same picket situation prevailed here as prevailed at Central Storage, and when informed that it was, he said he would not pick up the freight?

MR. LIPSITT: Yes. And Morrett called the Daily Motor Express and spoke to the office girl and he asked her if the Daily Motor Express driver would pick up from this terminal, and was informed that they would not.

MR. HANDLER: All right.

MR. LIPSITT: Mr.* dispatcher for Hartman's Transportation Company, will testify that he was called by the foreman for George W. Weaver and Son to make a pickup at the Pennsylvania Railroad terminal platform, and that he refused to send any of his drivers because of the pickets which were stationed at the Pennsylvania Railroad terminal; is that all right?

*Name omitted from original notes of testimony.

Q. Are you a picket at the place of business at the Central Storage?

A. We do.

Direct Examination

BY MR. HOHN:

Q. What is your name?

A. Edgar Long.

Q. When did you get to be president of the Teamsters Chauffeurs and Helpers Union?

Hearing on Motion for Preliminary Injunction

Direct - Thompson

A. I was elected in December that took office in January.

Q. [illegible] that year?

A. [illegible]

Q. Prior to that time, where were you?

A. Prior to that time I was vice president of the [illegible]

Q. Where?

A. In Harrisburg.

Q. How long have you been in Harrisburg?

A. About 28 years.

Q. You are familiar with local conditions, then, are you?

A. To some extent.

Q. Haven't you been in this business for 28 years?

A. That is true.

Q. And the purpose, you say, is to get the men of the Central Storage and Transfer to join the union, that is the purpose of the picket, is it?

A. No, I stated the matter, the purpose was the general organizing campaign.

Q. What do you mean, general organizing campaign?

A. We don't only have pickets at Central Storage—

Q. What do you mean, general organizing campaign?

A. General organizing campaign is to increase the economic strength in our local union.

Q. You instituted the picketing to try to get employes of Central Storage and Transfer to join your union, is that correct?

A. This picket that we have there—

Q. Isn't that what those posters carry?

A. Yes.

[illegible] Hearing on Motion for Preliminary Injunction

[illegible] Direct - Ryan

Q. Have you made any attempt to contact the employees of [illegible] Delivery, or Hill Express, or Warwick?

A. I would say no.

Q. Have you made any effort by letter or phone to [illegible]?

A. [illegible]

Q. How long has this campaign been going on?

A. I would say this campaign has been going on since the latter part of May when it was first formulated.

Q. How many employees does the Merchants Delivery have?

A. Ten or eleven.

Q. How many employees at the Hill Express?

A. Four or five.

Q. You have withdrawn pickets from both those places?

A. We have not.

Q. They are out there yet?

A. They were at the Merchants Delivery.

Q. Have those Hill Express?

A. Hill Express, we withdrew them from there.

Q. What were those reasons?

A. The reasons, we didn't have the manpower to picket them.

Q. Those pickets you have in front of the Central Storage, are they members of your union?

A. They are the—

Q. They are members of your union?

A. Yes, sir.

Q. They are being paid by you their daily wage to picket there, is that right?

A. Absolutely.

Hearing on Motion for Preliminary Injunction

Direct Examination

Q. And likewise, I suppose, now, you are familiar with the various conditions and you are also familiar with the contracts with the various operators and their relationship, are you not?

A. Yes.

Q. And in a few days there comes a time for decision when you can say, as to each of those, what?

A. [illegible]

Q. [illegible] with Hartman, [illegible] Hartman, [illegible] with Hartman, [illegible] with Hartman, [illegible] with

Examination for Preliminary Injunction
Direct (Mr. Handler)

Q. You never knew you put those pickets at Central Storage and Transfer that the union men would not cross, did you?

A. I didn't.

Q. You didn't know that they would cross?

A. [illegible] I don't know whether [illegible] I don't know.

Q. [illegible] I didn't. I didn't. Isn't it a fact that you instructed a small group of teamsters that came with the Central Storage men to organize and attempt to deliver goods at C.S. Central Storage and Transfer, and do anything [illegible] you or Mr. Kline, and you went down [illegible] to the Central Storage and Transfer?

A. I did not.

Q. Did you get that call?

A. I don't know if I got that call or not, there are many calls.

Q. You don't know quite whether or not the Union men of the Hansman and others are not crossing the picket line, that is news to you, is it?

A. I know some did and some didn't.

Q. And your purpose was to get union members?

A. Correct.

Q. How are you going to get union members of employers that you are driving out of business?

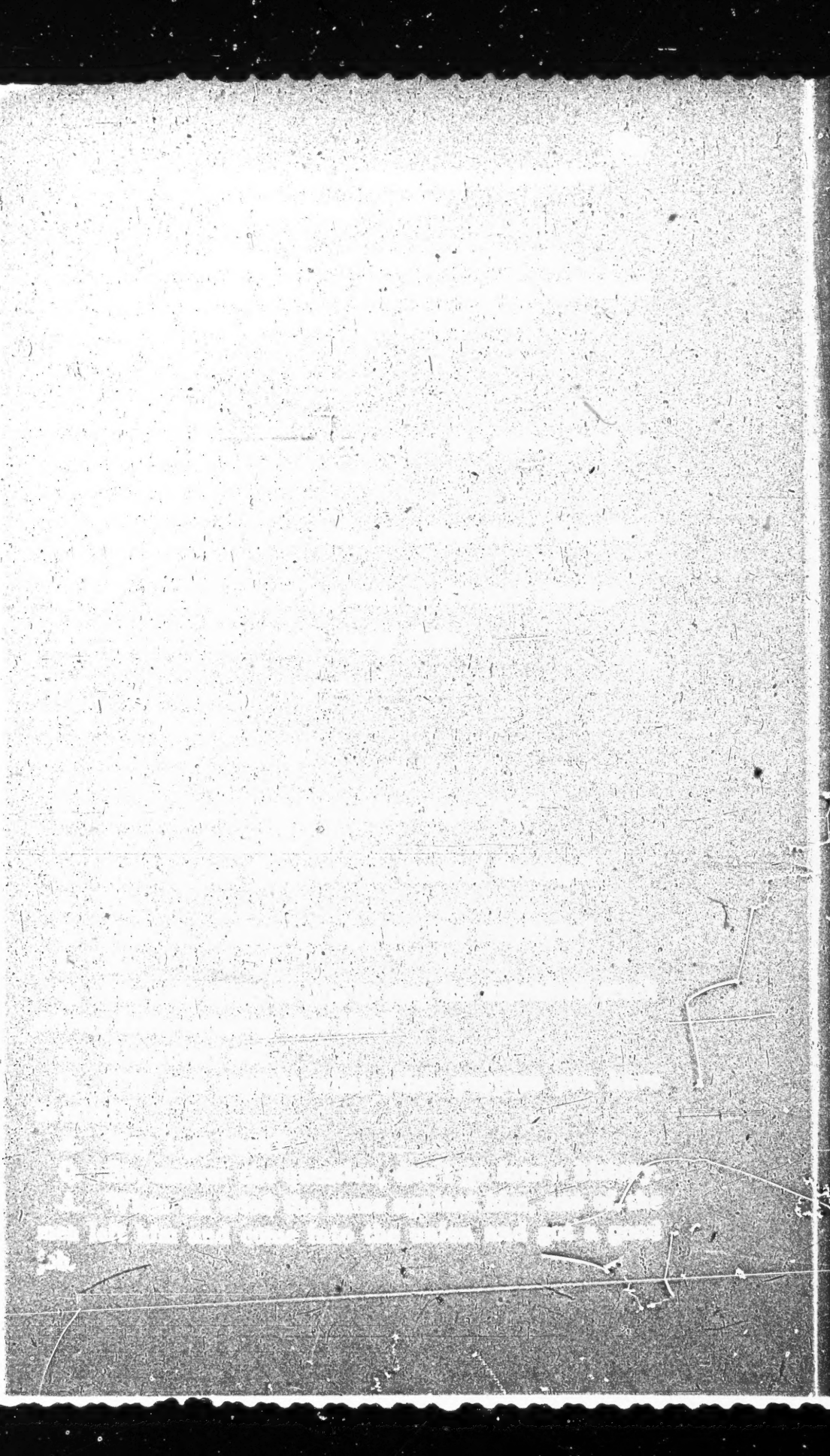
MR. HANDLER: If the Court please, we object. The question is argumentative, and the answer would be misleading.

THE COURT (Judge Smith): Objection sustained.

Q. Did Mr. Kline, your general business manager, tell you that Mr. Kline had called and said he was being

picket line we took the telephone directory.

Pennybrook Commercial Drive, 101 Pine Street.



▽ [illegible]

△ [illegible]

Q. Was it your purpose then, when you [illegible] that the [illegible] would [illegible] it?

A. No.

Q. Wasn't that your purpose now?

A. No.

Q. That wasn't your purpose?

A. No.

Q. Do you deny that your office, Local 776, gave [illegible] to other [illegible] would not to deliver or [illegible] Central Storage?

A. I will answer yes in this way: I have no knowledge.

Q. Suppose you answer yes or no, and then give me the story you want to give. Answer yes or no. Do you deny that?

A. Yes.

Hearing on Motion for Preliminary Injunction
Edgar Long - Direct - Alan Kline - Direct

(At side bar conference)

MR. HANDLER: I would call another witness whose testimony would be the same.

THE COURT (Judge Rupp): I think we have been through that.

MR. HANDLER: My feeling could be substantially the same thing.

THE COURT (Judge Rupp): Are we limited with the testimony?

MR. HANDLER: Yes, it is understood that the testimony of Mr. Long will apply with respect to his clients.

THE COURT (Judge Rupp): Yes.

MR. HANDLER: And that if Mr. Kline were called his answers would be substantially the same.

MR. KOHN: We won't agree to that; I won't agree to that.

MR. HANDLER: If Mr. Kline were called, his answers to the same questions would be substantially the same as Mr. Long, for the purpose of this hearing.

MR. KOHN: We won't agree to that.

THE COURT (Judge Rupp): Better call him if you want to call him.

(Side bar conference ended.)

ALAN KLINE, having been duly sworn according to law, was examined as follows:

Request on motion for preliminary injunction

Direct Examination

Q. What position do you hold with the defendant Union?

A. [illegible]

Q. [illegible] at the place of business [illegible]?

A. [illegible]

Q. [illegible]?

A. [illegible]

Q. [illegible]?

A. [illegible] an appeal to the employees at [illegible] to join the union for better working conditions and wages and hours.

Q. Was [illegible] for any other purpose?

A. No, sir, whatever.

Q. Did you or your organization make any demand upon Weaver or Central Storage and Transfer?

A. No, sir, we have not.

Q. Is this activity limited to Weaver and Central Storage?

A. It is not. It is limited to Hill Bergman, Merchants Delivery, Central Storage, George Weaver and Son, and we contemplate continued organization of other companies.

Q. In connection with the Central Storage, why was the picket placed at Keating Railroad platform rather than on Cameron near State?

A. I chose that place to put the picket because I didn't want to convey the impression that we were including the organization to office workers, we are only organizing truck drivers and helpers. This terminal is listed in the phone book, and we have here Mr. Garner,

and I was told that he was at the warehouse, and then
[illegible] that was the place to reach Brown
in Birmingham.

Cross Examination

BY MR. KOHN:

Q. Where do you live, Mr. Elder?
A. [illegible] Alabama.
Q. What is your business address?
A. [illegible]
Q. And, Mrs. Elder, where were you on the morning of June 7th?
A. Any number of places, I was in and out of the office.
Q. Were you in the office at all?
A. Yes, I said I was.
Q. Did your girl tell you Mr. Garner had called you several times and it was very important that he get in touch with you?
A. Not until I came in office.
Q. When was that?
A. Oh, it was about ten o'clock.
Q. Did you have any idea what it was about?
A. I didn't have any idea.
Q. You didn't have any idea?
A. No.
Q. Now, you said something about contemplating continuing your organizational work?
A. That is right.
Q. And where do you contemplate continuing?
A. We have other dray lines that are non-union.
Q. Do you now realize that this may involve great

Hearing for Preliminary Injunction
Direct Examination - Owens

[illegible] to leave [illegible] as it did to the present [illegible]?

A. I don't believe they'd could greatly damage, no [illegible] damage to the [illegible].

Q. Why [illegible] Mr. Mowrey that that wouldn't [illegible] you told Mr. Mowrey that the [illegible] would [illegible] in a dangerous way?

A. I don't believe I made such a statement.

Q. You deny [illegible]?

A. I deny I ever made that statement.

Q. You know you didn't make that statement?

A. That's right.

Q. What did you say to him about it as to why they were there?

A. I told them that we weren't going to run all around, we were [illegible] the people the way we did, and it is nothing more than picketing a sign [illegible].

Q. You realized that your [illegible] a picket there that the truck men would not would not cross that?

A. I didn't realize that.

Q. As I understand, your Union asks those firms to instruct their men not to cross the pickets?

A. No, we haven't.

Q. You heard Mr. Bowman's testimony on the stand, you told him that if the union men would cross this picket that would be very uncooperative, do you deny that?

A. Yes, sir.

Q. You deny telling Mr. Mowrey not to go in there, that something would happen?

A. Yes.

Q. You deny getting in touch with the Reading

Hearing on Motion for Preliminary Injunction
Allen Krause—Cross

Transportation Company union at Reading and told them you didn't want their men to go in there?

A. Yes.

Q. You deny getting in touch with the Reading Transportation Company and telling them not to use them in there?

A. Yes.

Q. Do you deny getting in touch with the Reading Motor Express and saying the same thing?

A. Yes, certainly.

Q. And Reading Motor Express, the same thing?

A. Yes, I do.

Q. All of these different companies picked this out of their thumb, there was absolutely no reason for it, so far as this union is concerned?

A. Yes, sir.

Q. There is no provision in the contract that the employees shall not cross the picket line?

A. There is not.

Q. There is not?

A. No.

Q. Mr. Long said there was?

A. I believe he misunderstood the question.

Q. You don't have any—

A. I wish to qualify the statement.

Q. I don't follow you—

A. I am qualifying my statement.

MR. HANDLER: Let him explain.

Q. What do you mean?

A. The contract is explicit, it says the company can not fire a union member if he refuses to go through picket line.

Q. You mean to tell me now that the Union has

contract that if a man does not go through a picket line they can't fine him?

A. That is right.

Q. But can they fine him?

A. No.

Q. They can't fine him either?

A. No.

Q. Now, however, if the employer tells the union man he has to cross the picket line, he doesn't have to do so?

A. That is correct.

Q. He can refuse to do so?

A. Yes.

Q. The employer can't force him to do so?

A. He cannot.

Q. If the employer forces him, he is in trouble with the union?

A. He is not—may I qualify that statement?

Q. Yes.

A. The only trouble he would be in would be with his own terminal, there might be other members of the union who would look upon him as doing things he shouldn't do.

Q. Your union is a member of the National Union to which folks belong, out of Reading, and other outfits?

A. It is.

Q. You are affiliated—

A. We have complete local autonomy.

Q. You don't have any idea why all the other unions, who were directly affiliated with this National Union, would refuse to deliver goods in Harrisburg?

A. I do not. We notified them.

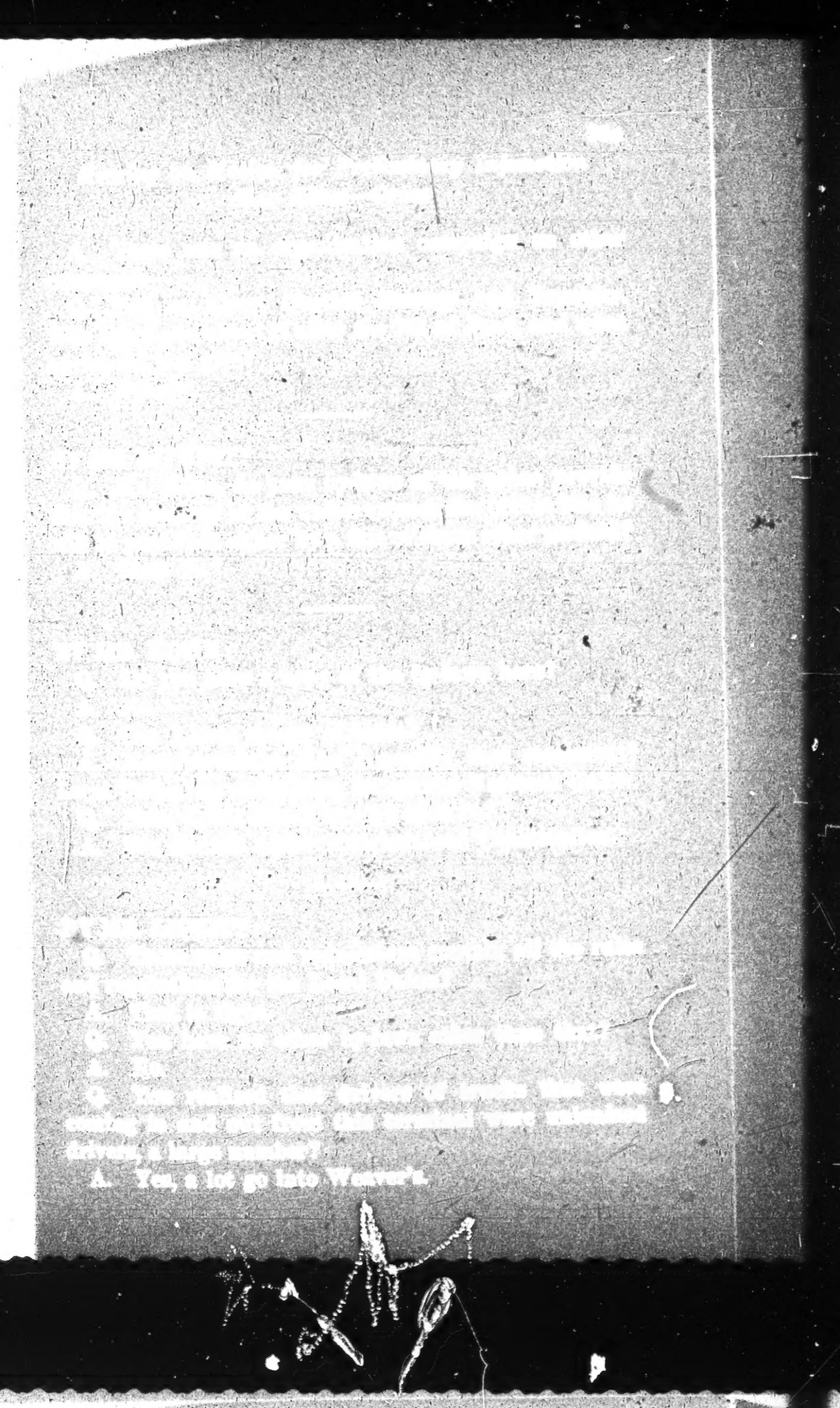
Q. You notified them?

A. Yes.

Transfer?

A. You want [illegible] for the General Fund and Transfer?

Q. Yes, if you please?



which are comparable (e.g. if communications you have with other Local Unions)?

Same as Defendants' Exhibit No. 1, except that it is addressed to:

Mr. Leon Siler, Secretary-Treasurer
Local Union No. 430

(31,000.00) conditioned to indemnify defendants as required by law, restraining and enjoining the defendants and each of them and their servants, agents and employees from picketing or continuing to picket, either with or without the use of signs, any of the plaintiffs' several places of business, including the picketing and patrolling of the streets before the loading platform at

[redacted]

[redacted]

[redacted]

Defendants' Memorandum—Motion for Extension

[illegible] of the Fair Labor Standards Act of 1938, as Amended, the Constitution of the United States of America, and the Constitution of the State of Texas.

3. That the Interrogatories propounded to the Defendants and the Answers thereto, the Depositions and the Statements of Witnesses obtained, as above set forth, have not been completed, and that only have not as yet been completed, and that accordingly Defendants are unable to furnish to the Court herein the additional information which the Interrogatories and Depositions will disclose, and which information is necessary to the proper preparation of Defendants' case herein.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the time for filing their Answer to Plaintiff's Complaint herein be extended to and including the 17th day of June, 1943, and that the Preliminary Injunction hearing herein, now set for the 17th day of June, 1943, be extended until the date of hearing [illegible] of the hearings in the above-styled cause, are terminated and that

DOUGLASS & HANDLEY, ESQUIRES
/s/ By Sidney G. Handley,
Attorney for Defendants.

MOTION FOR EXTENSION OF TIME FOR FILING INTERROGATORIES

And Now, this 9th day of June, 1943, [illegible] Defendants, by their Counsel, Sidney G. Handley, Esq., of Douglass & Handley, [illegible] move this Honorable Court that the time for filing exceptions to the Plaintiff's Interrogatories, Preliminary Injunction and the Preliminary Injunction hearing set for the 17th day of June, 1943, be extended until the date of hearing [illegible] of the hearings in the above-styled cause, are terminated and that

DOUGLASS & HANDLEY, ESQUIRES
/s/ By Sidney G. Handley,
Attorney for Defendants.

1943

United States District Court

ORDER

And now, this 17th day of June, 1943, upon motion of [illegible], Counsel for the Defendants [illegible] and it being shown that the issue of [illegible] which is the basis of this [illegible] has been transferred by [illegible] Order of [illegible].

[illegible] the form of this exception to the Direct Appeal Preliminary Injunction and the Permanent Injunction [illegible] and [illegible] 30 days from the date of [illegible] have been [illegible] the Preliminary Injunction in this case [illegible] the [illegible] exception of [illegible] provided [illegible] the [illegible] of the Defendants [illegible] the [illegible] by the said Defendants is received.

/s/ [illegible]
[illegible]

ADDITIONAL EXCEPTIONS TO DIRECT
APPEAL PRELIMINARY INJUNCTION
AND PERMANENT INJUNCTION

And now, this 17th day of June, there was shown cause [illegible] Counsel for the Defendants, [illegible] of Counsel for the Plaintiffs, [illegible] the following exceptions to the Direct Appeal Preliminary Injunction and the Permanent Injunction entered on the 17th day of June, 1943, in the above [illegible].

1. The Preliminary Injunction abridges the right

of freedom of speech guaranteed by the First Amendment to the Constitution of the United States.

4. The Preliminary Injunction should be denied because the defendants' activities are protected by the First Amendment of the Constitution of the United States.

5. The Preliminary Injunction should be denied because the legislation challenged by the plaintiffs violates the Constitution of the United States, in that it violates the First Amendment of the Constitution of the United States.

6. The Preliminary Injunction should be denied because the acts of the defendants complained of by the plaintiffs are protected by the First Amendment of the Constitution of the United States.

7. The Preliminary Injunction should be denied because the plaintiffs' complaint fails to state a cause of action under the Fourteenth Amendment of the Constitution of the United States.

8. The Preliminary Injunction should be denied because the rights of freedom of speech guaranteed by the plaintiffs are protected by Section 7 of Article I of the Constitution of the Commonwealth of Pennsylvania.

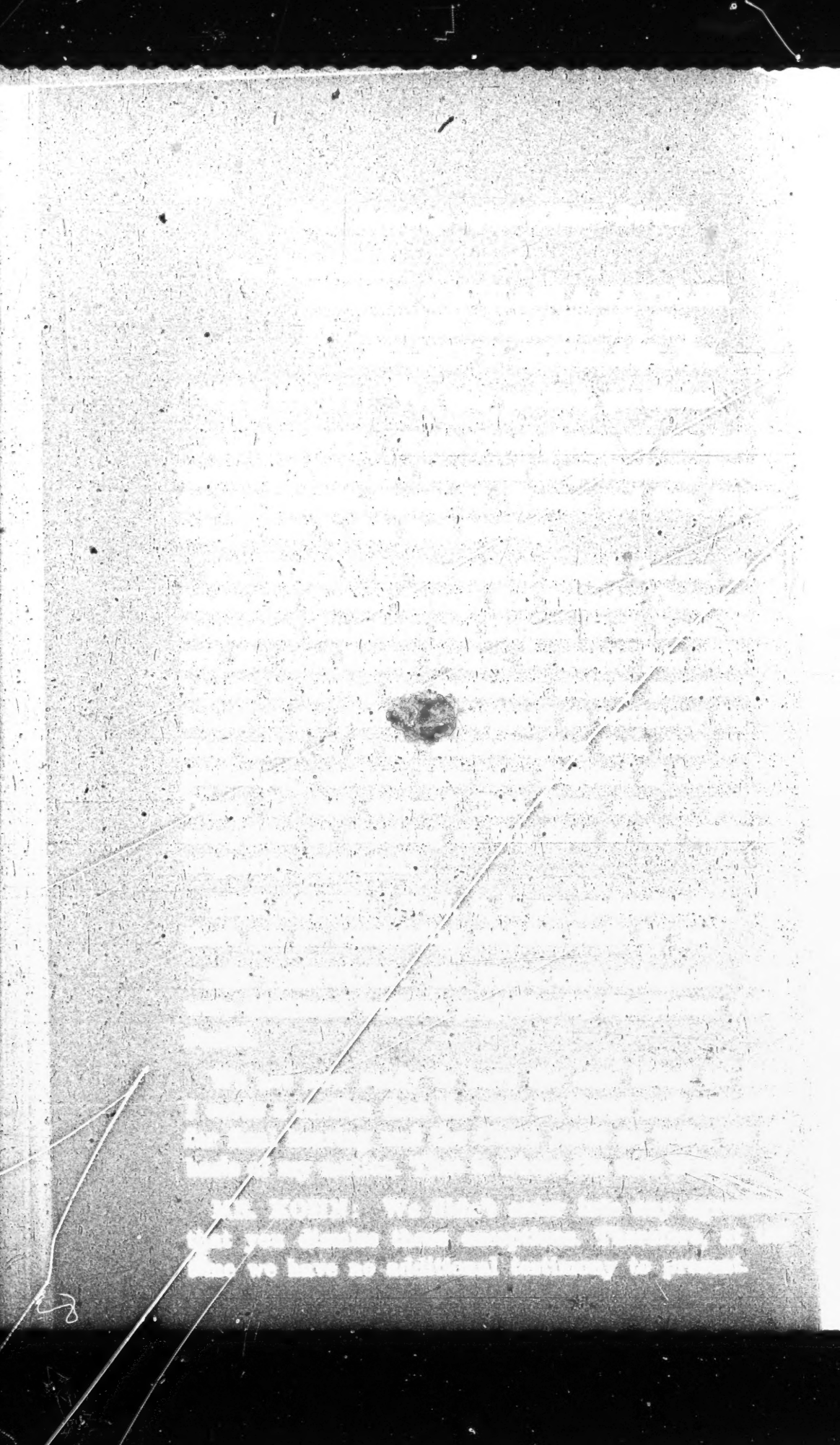
9. The Preliminary Injunction should be denied because the rights of freedom of speech guaranteed by the plaintiffs are protected by Section 20 of Article I of the Constitution of the Commonwealth of Pennsylvania.

10. The Preliminary Injunction should be denied because the defendants' activities are protected by Section 21 of Article I of the Constitution of the Commonwealth of Pennsylvania.

11. The Preliminary Injunction should be denied because the defendants' activities are protected by Section 26 of Article I of the Constitution of the Commonwealth of Pennsylvania.

12. The Preliminary Injunction should be denied because the defendants have a right to assemble in a peaceable manner and therefore contravenes Section 20 of Article I of the Constitution of the Commonwealth of Pennsylvania.

II. The Decree Awarding Preliminary Injunction





MR. [illegible]: We are entering the document for identification only and will ask that Counsel be

THE COURT: Well, we will reserve our ruling on objection on the part of counsel for both [illegible]

MR. [illegible]: If your Honor please, I would like to ask him another question which [illegible]

BY MR. [illegible]:

Q. Mr. [illegible], are a member of the Democratic [illegible] of Washington County, Pennsylvania, and [illegible] Democratic Committee of Local 770 be permitted [illegible] with unanimous [illegible] of Local 770 [illegible] Democratic Committee, Washington County, Pennsylvania, [illegible] a form such as appears on or prior to June 1, 1960?

MR. KOHN: We object to the question as to what [illegible] to know what this is. It calls for [illegible] of the witness, of the defendants or [illegible] testimony from witnesses.

MR. [illegible]: This is offered by way of [illegible] the purpose of the pleadings and effect of pleadings [illegible] document.

MR. KOHN: What testimony is already in.

MR. [illegible]: It may be in but not as [illegible] it should be, and I think I should have an opportunity to get it in at this time more clearly so that there is no mistake as to what conclusions can be drawn from it. We have a right to augment the record.

MR. KOHN: If he wants to offer testimony, I can't object. I must admit that is the law. If it is a question of rebuttal on something that was said, then I say he

the right to present any rebuttal of what this witness said.

MR. HANDLER: I am offering it in explanation of the defense that has been proposed here and to the nature and purpose of the patent.

HEAR YOUNG: And you object?

MR. KOHN: I object on the grounds it is already in the testimony.

HEAR YOUNG: We will reserve our ruling.

BY MR. HANDLER:

Q. Will you answer the question?

A. The answer to the question is no.

Q. Will you explain that answer, Mr. Kline?

MR. KOHN: I don't see why it needs any explanation.

MR. HANDLER: I asked the witness to explain that and I think he has a right if he has an explanation to make.

MR. KOHN: What is he supposed to explain? His answer is plain on its face. I don't know what explanation is going to be given and I object to the question as improper unless counsel can state what the answer is going to be. I don't see that it has any effect. It is either clear on the face or means anything. The interpretation is a matter for the Court.

MR. HANDLER: With such explanation as to what a union representative sees fit to make—I will withdraw the last question.

BY MR. HANDLER:

Q. I ask you, Mr. Kline, I direct your attention to

Direct Examination—Abbe Kline—Dorsey

page 68, Section 6 of the Constitution and By-Laws
limited the identification as Defendants' Exhibit D
and ask you to read that and to state what that
evidence is?

A. Any employee who knowingly engages in any
remains in the employment of any employer who
provides, whose name appears on posters or printed
in violation of the provisions of this Section, shall
of not less than $100 nor more than $500 for
Board for the first offense.

Q. Does that provision have any application
situation that existed here?

MR. KOHN: That is objected to. That is a matter
of fact.

THE COURT: We will sustain the objection.
Constitution speaks for itself.

MR. HANDLER: No, if your Honor please, I
goes to the very heart of the case. I will make an
if the Court please. While the Constitution provides
for certain penalties for certain actions in connection
with any strike activity, it is my purpose to establish
that the picketing which prevailed in this case, and
which is the subject of this controversy, was not an
incident of a strike, and therefore that section of the
Constitution has no application here.

MR. KOHN: I wouldn't know what we need
Judge for them.

MR. HANDLER: The witness can certainly tell
whether or not they called a strike.

MR. KOHN: That is all in the record.

MR. HANDLER: It is not in the record.

MR. KOHN: Your Honor, we object to any

Field Hearing—Allen Klein—Direct

objection on the part of this witness. If he asks him [illegible] as to whether or not there was a strike, that is a matter for the Court to decide, but now [illegible] whether this particular thing has an appli- [illegible] to the case and he has drawn a conclusion of [illegible] for the Court.

THE COURT: We insist the witness should be re- [illegible] stating to facts.

MR. HANDLER: Mr. Klein, will you state whether or not during the period covered by the testimony of [illegible] in this case, that is the period prior to June 7th, 1955, whether Local 776 of the Inter- [illegible] Brotherhood of Teamsters, Chauffeurs, Ware- [illegible] and Helpers of America maintained a strike against the unions in either of these two cases?

A. No.

Q. Will you state then whether the pickets had any relationship to a strike?

MR. KOHN: We object to that. That is a matter of fact. It is a matter for the Court to draw the conclusion.

THE COURT: Well, the testimony shows that the members of the union didn't cross the picket lines.

MR. KOHN: Yes, that is a matter of fact. We object to the question.

BY MR. HANDLER:

Q. You mean then there was no labor dispute—

MR. KOHN: We object to that. That is a leading question.

BY MR. HANDLER:

Q. Was there a labor dispute between Local 776 and the plaintiffs in these two cases at that time?

A. Yes.

Q. Will you explain your answer?

THE COURT: He said yes.

MR. HANDLER: I didn't be entitled to explain it he will.

MR. KOHN: No, he isn't entitled to [illegible] explanation with that.

BY MR. HANDLER:

Q. Was [illegible] the subject of the [illegible]

A. [illegible]

MR. KOHN: Wait a minute. What was the [illegible] of the [illegible]

BY MR. HANDLER:

Q. In connection with [illegible]

A. [illegible] Wanted [illegible] and [illegible] all [illegible] and [illegible] and [illegible] and [illegible] certainly [illegible] of [illegible]

Q. Why did you use the [illegible] of [illegible] employees to [illegible]?

MR. KOHN: Now, if it please your Honor, I [illegible] this testimony.

MR. HANDLER: I am asking the question for the purpose of [illegible] whether he has any explanation to make. Whether he wants to make on the explanation already made, and I have a right, this is a final hearing—to ask the question for that purpose.

THE COURT: We will permit the question.

MR. KOHN: Exception, your Honor?

MR. ROHE: We have exception on the ground they are both cumulative and not facts.

THE WITNESS: In the case of George Weaver & Son, we had a member organized by the name of Boose, and shortly thereafter he was discharged, and

told him.

THE COURT: Now, we are going [illegible]. Any statement made by these alleged members of the union in the presence of the plaintiffs would be all right. He could not testify beyond that.

(Off record discussion.)

[redacted]

[redacted]

[redacted]

MR. HARPER: Well then, the question and the answer will appear in the notes of testimony, will they

MR. HANDLER: Well, that has been alleged in the bill of complaint. We have a right to ask the witness specifically if that is the reason.

in line with his examination at the last hearing. It is merely an elaboration. There is nothing of a surprise, nothing new and nothing of which Mr. Kohn has had no notice. There has been enough time elapsed in the matter, I think it is ready for determination and find-

ment Relations Act in so far as that law relates to union shop. So that, therefore, there is only one question and that is the question of whether or not that strike was

MR. KOHN: He should not have been asked any questions in regard to what the National Labor Relations Law is in certain areas, because I don't know what it is.

THE COURT: I think we struck that testimony out.

Final Hearing—Motion for Continuance

MR. ROSEN: Not all of it.

THE COURT: On record.

(On record discussion.)

THE COURT: Pursuant to the motion made I granted the plaintiffs we will continue the hearing until a date in August to be mutually agreed between counsel for the respective parties for the purpose of permitting cross-examination of witness Ida Shaud, Mr. Klein, and also for any rebuttal if it is desired to be offered at that time.

MR. SCHNEIDER: I should like the record to show that I object to the motion for continuance for the purpose stated.

THE COURT: Yes.

HEARING ADJOURNED.

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the hearing of the within cause, and that this copy is a correct transcript of the same.

/s/ Dewey Lauria,
Official Stenographer.

The foregoing record of the proceedings upon the hearing of the within cause is hereby approved and directed to be filed.

/s/ Paul G. Smith,
Judge.

VIII.

MOTION FOR FINAL HEARING

And now, this 19th day of July, 1954, Defendants in the above stated case by their Counsel, Sidney G. Biddle, respectfully move that [illegible] Honorable Court fix a time and place to consider the final decree in said matter, and in support thereof, averers the following:

1. The above stated case stands on the Final Hearing List for the September Term, 1954, of this Court, and is listed for Wednesday, July 21st, 1954, at 10:00 o'clock, A. M., E. D. S. T., pursuant to the order of Court fixing the time and place for such hearing, entered upon motion by Counsel for Defendants herein.

2. That at said Final Hearing held on July 21, 1954, before the Honorable Paul C. Smith, Chancellor, Defendants entered in evidence the testimony of one witness, viz., Alan B. Kline, one of the Defendants.

3. At the conclusion of the said direct examination of the said Alan B. Kline, by the Counsel for Defendants, the Counsel for Certain Persons and Friends Of, the Franklin In No. 1894 Docket, requested a continuance on the ground that he would be required to read a transcript of the said direct testimony of Alan B. Kline, in order that he might cross-examine him, which said motion was granted over the objections of Counsel for Defendants.

4. That Counsel for Defendants has since the granting of said continuance, consulted the Court Reporter who took the notes of testimony at the hearing on July

Motion for Final Hearing—Order

ing, 1950, and has been informed that the said notes of testimony have been transcribed and are available to Counsel for the parties.

4. That on the basis of the availability of the said notes of testimony, efforts have been made by Counsel for Defendants to have this matter heard, but to the Counsel for Defendants, has been unable to obtain a time for such hearing by agreement or otherwise.

5. That this case involves issues of great importance to the working people of this Commonwealth and should be conducted with dispatch and expedition.

WHEREFORE, it is respectfully moved that a time and place for final hearing in this matter be fixed for an early date by your Honorable Court, and that the parties to these proceedings be directed to appear and conclude the hearing at such time.

Respectfully submitted,

DOUGLASS AND SAUDDERS

/s/ Sidney G. Saudders,

Attorneys for Defendants.

ORDER

And now, this 1st day of Aug., 1950, it is hereby directed that a hearing of the above-entitled matter shall be held in the Dauphin County Court House, Harrisburg, Pennsylvania, in the Court Room Number 2, on the 8th day of August, 1950, at 10:00 A. M., E. D. S. T., at which time the Final Hearing in this matter shall be concluded.

By the Court,

/s/ Paul G. Smith, J.

IX.

FINAL HEARING
(Continued)

Before:

Honorable Paul C. Smith, Judge, 12th Judicial District of Pennsylvania, Courts of Dauphin County.

At Harrisburg, Pennsylvania, Wednesday, August 9, 1950, in Court Room No. 3, Dauphin County Court House, at 10 o'clock a. m.

Appearances:

For Central Storage & Transfer Co.: David S. Kohn, Esq.

For Geo. W. Weaver & Son, Inc.: Messrs. Shelley & Reynolds, By: William W. Lipsitt, Esq.

For Defendants: Messrs. Douglass & Handler, By: Sidney G. Handler, Esq., Roland U. Douglass, Esq.

THE COURT: You may proceed, gentlemen.

ALAN KLINE, resumed.

Cross-Examination

BY MR. KOHN:

Q. Mr. Kline, previous to June 7, 1949, had you contacted the Central Storage & Transfer and any of its employees before the pickets were placed on the premises at 9th and Market, near the terminal of the Reading Transportation?

A. No.

Q. How long had it been since you attempted to organize any employees of the Central Storage & Transfer?

A. We have been continually attempting to organize them.

Q. Well, what was the last thing you did previous to that in attempting to organize them?

A. Contacting the men.

Q. Where and when?

A. They wouldn't use their names. They were afraid to talk to us.

Q. Who did the contacting; where and when?

A. I did the contacting at several of our terminals and on the streets.

Q. You know what I am talking about?

A. Yes.

Q. I am talking about the Central Storage & Transfer?

A. Yes.

Q. Now, will you answer my question?

A. I contacted them at several of the terminals and on the street.

Q. Who did you contact?

A. I don't know; they refused to give their names; they wouldn't talk.

Q. Where did you contact them; who was present?

A. I was the only one present.

Q. At these terminals you were the only one present?

A. Certainly.

Q. What terminals were they that you were the only one present?

A. York Motor Express, Halls Transit.

Q. Where was that terminal?

A. I don't know the address of it.

Q. All right. Where was the other terminal?

A. Fifth Avenue Terminal.

Q. What street?

A. Fifth Avenue, Seattle.

Q. Where did you contact there?

A. Same [illegible] Engineer.

Q. By what name did you know that?

A. I don't remember.

Q. How many days before June 7, 1949 was it?

A. About two or three months.

Q. Was did you contact there?

A. They wouldn't tell me their names.

Q. Whose employees were they?

A. Central Storage.

Q. How do you know that?

A. Because they were driving his trucks, and I am sure they wouldn't be if they weren't.

Q. Do you think they were employees?

A. I would assume that.

Q. And you assumed from that they were employees of the Central Storage & Transfer?

A. Under the law, they would have to be.

Q. Will you answer my question as a fact and not give conclusions of law, or are you a lawyer, too?

MR. HANDLER: If the Court please, I object. That last remark was wholly unnecessary.

MR. KOHN: He asked for it.

THE COURT: This witness said under the law, and I think the question is proper.

BY MR. KOHN:

Q. Are you a lawyer, too?

[illegible]

A. No.

Q. Are you going to be reimbursed by the [illegible] will you receive any [illegible]?

A. I will not be [illegible]

Q. [illegible] Local Union [illegible] Local Union [illegible] Union [illegible] Union [illegible]

BY MR. KOREN:

Q. Who interprets for your Local the rules set forth in this Constitution?

A. The International Union.

Q. Who interprets what shall be done under these rules for your Local Union; who decides the policy to work under this Constitution?

MR. KOHN: He can answer the question.

BY MR. KOHN:

Q. I ask if you are familiar with it?

A. Yes, I am familiar with it.

Q. You have a copy of that in your hand, do you not?

Direct—Allen Klein—Cross

MR. KOHN: I will withdraw the question.

MR. HANDLER: [illegible]

MR. KOHN: I will refresh it for him.

Direct Examination--Mr. Evans--Owen

by Mr. Evans as follows:

Q. Mr. Owen, you are a member of the Executive Board of the International Association of Machinists, are you not?

A. I am.

Q. And have been for how long?

A. Since 1912.

Q. And you were elected for what term?

A. Four years.

Q. And your present term of office expires when?

A. In September, 1916.

Q. Are you employed at any present time by the International Association of Machinists?

A. I am.

Q. In what capacity?

A. As a member of the Executive Board.

Q. Are you employed at any other

A. It is a matter for our own interpretation.

Q. Do you bring penalties against the men in your own union for violations of it? A. It is up to you to determine but only on local procedures. I can tell you about them men who are members of the Labor Union. As regards this case, it would be a matter for your interpretation as to whether or not they would be penalized under this Section?

A. Yes, but we wouldn't penalize them because they have a right to appeal to the International Union and they cannot be penalized until the decision is handed down.

Q. Please answer the question.

A. I answered it.

Q. You denied it. I am asking you now whether or not in the first instance the question of whether or not a man should be penalized under this Section is a matter for discussion by you and Mr. Long? Answer that question?

A. No.

Q. Who makes that determination?

A. The International Union.

Q. What do you do; complain to the International about your men?

A. Yes.

Q. When has that been done last?

A. We have yet to do that.

Q. Do the men them know that or are they under the impression that the question of penalties would be decided by the local lodge?

A. They know the facts.

Q. How do they know them?

A. They each have a Constitution which they carry in their pockets.

Q. And that is a matter of interpretation?

A. And from past precedents in the International Longshoremen's Union they receive monthly.

Q. But you don't know if they read it or not?

A. No, I don't know if they read it or not.

Q. Yes, I think, testified that you felt that because you couldn't get the drivers of Central Storage to join the union that there was a controversy or dispute between the labor union and the Central Storage & Transfer?

A. Yes.

Q. Of course you followed your Constitution and the provisions under that Constitution, did you not?

A. Yes.

Q. What does your Constitution say that you shall first do before anything else is done?

A. You read the part of the Constitution that gives us our objects, which is Section 2 of Article I, "To organize under one banner all workmen engaged in the craft."

Q. Did you understand my question?

A. That was the interpretation I took from your question.

MR. KOHN: Will you repeat the question?

(Whereupon the question was read as follows:)

"Q. What does your Constitution say that you shall first do before anything else is done?"

MR. HAMBLEN: Now if your Honor please, the answer was directly responsive to the question. The witness has already testified on direct examination and is now reaffirming on cross-examination that a labor dispute, as distinguished from a strike, exists where the union seeks to organize the unorganized people in their craft. Now, it is completely responsive. I don't see any reason why the witness should be pressed further.

THE COURT: It is cross-examination. Mr. Kohn has a right to continue.

BY MR. KOHN:

Q. You stated, Mr. Kilon, there was a controversy or dispute in your estimation between the employer, the Central Storage & Transfer, and the union, is that correct?

A. That's right.

Q. And he was, previous to the placing of these pickets, never notified that there was any controversy or dispute in your opinion between the union and the employer; is that correct?

A. That's right.

Q. The first thing that was done was to place pickets there, and that was it, wasn't it?

A. That's right.

Q. Therefore, the dispute was between you and the union and the employer, is that correct; that is your statement?

A. The labor dispute—

Q. I am not asking for an interpretation. I am asking you who it was between?

A. Labor disputes always exist—

Q. I am not asking you to give me your interpretation. I am asking who the labor dispute was between.

MR. KOHN: And I ask that the Court direct the witness to answer my question.

THE COURT: The witness has answered that question before. He says the labor dispute was between the union and the employer.

BY MR. KOHN:

Q. I take for granted what the Court said is your statement, is that correct?

A. Yes, I will.

Q. Now according to your Constitution, which you have submitted—with and which you state that you believe you have everything necessary to settle in order with the Labor dispute which, according to you, existed before you could put pickets there or do any other act against that particular employer?

A. Yes.

Q. You then aren't familiar with Article VI, Section 6, which reads as follows, on page 17: "In any dispute with an employer, not covered by a local collective agreement, the local union shall make all reasonable efforts to settle the same through negotiation, and if it fails, through the arbitration tribunal"—and the rest of that section which goes with it—you are not familiar with that?

A. Yes, I am familiar with that.

Q. All right. Has the employee at any time ever refused you the right to talk to his employer at his principal office, which is located at Cameron and Santa Monica, for the purpose, for any purpose that you desire?

MR. HANDLER: Now if the Court please, that question is highly improper. Suppose he hadn't refused him to talk to his employees. The union is under no obligation or is it proper for the employer to have his employees at the office.

MR. KOHN: If Mr. Handler wants to give the answer—that is highly improper; that is not an objection—he giving the answer for the benefit of the witness. We think that is highly improper.

THE WITNESS: Yes.

BY MR. KOHN:

Q. What is the answer?

A. Yes.

Q. Yes what? What was the question you are answering?

A. The last question.

Q. What was the question?

A. Whether he ever refused me the right to meet with the people at the terminal, and the answer is yes.

Q. I didn't say at the terminal.

THE COURT: He said at the offices.

BY MR. KOHN:

Q. Don't you understand English?

A. Yes.

Q. Did I say the terminal?

A. You said the offices, which used to be his terminal. In 1939 he ordered me off the property.

Q. In 1949?

A. 39.

Q. And what were you doing there during that time, during working hours?

A. To ask him to organize.

Q. And when did you go in; after working hours to talk about organizing?

A. Went in to talk to Mr. Garner and he ordered me off the property.

Q. Did he ever refuse you to see the employees after working hours?

A. No, the first instance was enough.

Q. The first instance was enough?

A. I wouldn't then go back and ask him to meet with his employees on his own property.

Q. Don't you have four to six union members now

sic (how) that belong, in the Central Storage & Transfer?

A. We have four men that belong to the union in Central Storage and Transfer.

Q. This picketing took place for approximately one week, did it not, Mr. Kline?

A. Approximately.

Q. And during that time how many of the employees of either Weaver or Central Storage contacted you or any person in your union with a request that they be allowed to join the union?

MR. HANDLER: Now if the Court please, this is a highly improper question, the background of union hostility. The employees were anti-union. It is highly improper to ask the witness whether he was contacted.

THE COURT: There was no evidence before us that the employees were anti-union.

MR. KOHN: We think that is highly improper. It is the same thing that happened before the last question.

MR. LIPSITT: We ask that that question be stricken, as to the "anti-union."

THE COURT: We are not going to strike it, but the Court will pay no attention to your statement to the effect that the employees were anti-union.

Read the question.

(Whereupon the question was read as follows:)

"Q. And during that time how many of the employees of either Weaver or Central Storage contacted you or any person in your union with a request that they be allowed to join the union?"

THE WITNESS: I don't know. None contacted me.

BY MR. KOHN:

Q. When was the last meeting of your union held previous to June 7, 1949; full membership meeting?

A. The second Sunday in May.

Q. And at that particular time was any policy discussed in regard to the method of operation for the purposes of the letter which the union sent to the other unions?

A. No.

Q. Who wrote this letter to the other unions?

A. I don't recall if I did or Mr. Long.

Q. Previous to the writing of the letter, how long before you wrote the letter did you consult with Mr. Handler about it?

MR. HANDLER: Now, we object to that, if the Court please. The right of the defendant to have counsel and consult counsel has no relevancy here, and it has no bearing here.

MR. KOHN: We have no objection to counsel having prepared it, your Honor.

MR. HANDLER: There is no evidence that counsel did prepare it.

MR. KOHN: Then, what is your objection?

MR. HANDLER: Why, any interrogation that relates to the private relationship between the witness and myself. It involves this client and this attorney.

MR. KOHN: The letter mentions Central Storage & Transfer.

MR. HANDLER: That has no bearing on the question that was asked the witness.

MR. KOHN: We have a right to know who dictated it.

THE COURT: It is cross-examination and we want to develop all the facts.

MR. HANDLER: Cross-examination doesn't interfere with the confidential relation between counsel and client. The witness has stated that either he or Mr. Long answered that letter.

MR. KOHN: I think the Court overruled that objection.

THE COURT: I did.

BY MR. KOHN:

Q. Now, how long before this letter went out—the last meeting, you say, with full membership, was May of 1949?

A. Second Sunday.

Q. And this letter was dated June 1, 1949. Now, how long before you dictated this letter did you and Mr. Handler consult about the contents of that letter?

A. We didn't consult.

MR. HANDLER: We object.

THE COURT: The witness has answered they didn't consult.

BY MR. KOHN:

Q. You mean Mr. Handler never saw that letter before it went out?

A. No.

Q. You did this on your own volition?

A. We did it on our own volition because no strike existed.

Q. I didn't ask you that. You just answer my questions. You did it on your own volition?

A. Yes.

Q. And you did it without the knowledge and con-

sent of the membership which had a general meeting just two weeks prior—just look at me—you can answer that question.

THE COURT: As I understand his testimony, he says this particular question wasn't discussed with the memberhip. That was his testimony.

MR. KOHN: That's right.

BY MR. KOHN:

Q. Therefore, you then took it on yourself to write this letter?

A. Yes. I want to qualify the statement.

THE COURT: You may.

THE WITNESS: In order so that Joint Council wouldn't be involved—under the Article it says: "When a strike exists," it says, "the Joint Council must be first contacted." We had to write that letter to all members of the Joint Council so that they would know that there was no strike existing and the men were free to cross the picket lines.

BY MR. KOHN:

Q. That was the purpose of your letter?

A. That was the purpose of our letter.

Q. And that was the only purpose you could see in it when you wrote it?

A. That's right.

Q. And therefore you decided, without the sanction of the Joint Council, as to the method you were going to employ against those particular non-union operators who were mentioned in the letter?

A. That's right.

Q. You yourself determined that?

A. That's right.

Q. And you are an agent of the union?

A. That's right.

Q. And, of course, when questions came up on the letter and the policy set forth in the letter, it was up to you also to determine the policy and the course to be pursued?

A. That's right.

Cross-Examination

BY MR. LIPSITT:

Q. Mr. Kline, you stated in effect that that picketing was for the purpose of getting the employees at Weavers to join the union. You said that it was an advertising campaign; is that correct?

A. I didn't make that statement. I said the purpose of picketing was to get the employees to join the union.

Q. The employees at Weavers to join?

A. That's right.

Q. And you indicated that it was an advertising campaign?

A. That's right.

Q. Now, I believe also either you or Mr. Long testified that during the time that you had the pickets at the Pennsylvania Terminal none of the employees did join the union?

A. That's right.

Q. Now, were any of the employees themselves contacted, either by you or by members of the union?

A. When?

Q. During this campaign to get membership?

A. No.

Q. None of them were contacted personally?

A. No, not by word of mouth.

Q. Now, don't you think that in an advertising cam-

paign, that one of the most effective means is to approach the men individually? You can just answer yes or no.

A. Yes, but I would like to qualify the statement.

THE COURT: You may.

THE WITNESS: We had neither the funds nor the time to contact each man. Therefore we used this method of contacting the men rather than going from door to door, and using that method, because we had tried to previously and it failed.

Q. Then, your purpose was to contact the largest number of men in the cheapest way?

A. That's right.

Q. Do you know where the main office is of George W. Weaver & Son—well, do you know whether or not that is located at 539 North Front Street in Steelton?

A. No, I don't.

Q. You never knew that Weaver's main office is located in Steelton and not at the railroad terminal?

A. Yes, but I would like to qualify that statement.

Q. Well, I mean you just know that?

THE COURT: He may qualify.

THE WITNESS: Weavers conduct two businesses, one moving and storage and warehousing, and the other p and d work for the Pennsylvania Railroad. They purchased the Pennsylvania Railroad business from Montgomery, who maintained their terminal on the Pennsylvania Railroad dock. Therefore, we assume that in order to organize that portion of George Weaver & Son's business we should picket the Pennsylvania Railroad Terminal.

Q. Well, weren't you interested at all in organizing

the men connected with George W. Weaver who worked out of the Steelton office?

A. No.

Q. Do you know whether or not the men who work at the terminal had occasion during a period of a week or two weeks to go to the main office?

A. No, I don't.

Q. You don't know whether or not you could have reached the largest number of men by picketing in front of the Steelton office or by picketing in front of the terminal?

A. I know we couldn't.

Q. You know that you could not—well, explain that. I don't know what you mean.

A. Bud DiGuilio—

Q. Let me ask you this: You don't know whether or not the largest number of men could be picketed by picketing the main office?

A. Yes, I do know.

Q. You know what?

A. I know that they couldn't be picketed by picketing the main office.

Q. Explain that?

A. Bud DiGuilio, a member of our Local Union since 1938 or 1937, worked for George W. Weaver & Son for a period of two years when he came out of the Army, and when we contacted Bud—

MR. LIPSITT: I object to this. Is this something that DiGuilio told you?

MR. KOHN: Ask him whether he knew of his own knowledge.

THE WITNESS: Upon information received I found that most of the men don't go to the Steelton office, so

I personally went down to the George W. Weaver & Sons and found that the men don't take their trucks to Steelton at night. They take them to a parking lot.

BY MR. LIPSITT:

Q. Do you know that they go down there to get paid?

A. No, at night they go down to the parking lot.

Q. How about during the course of a week?

A. They might go down once.

Q. So you could have approached all the employees of George Weaver by going to the Steelton office?

A. Once a week, yes.

Q. Now, just a few more questions here: You have stated that in your letters which were dated June 1, 1949, written to the other unions—you wanted to explain about that, that there was no strike or boycott?

A. That's correct.

Q. Now, at the end of that letter or somewhere in the body of the letter, you asked the union employees for their cooperation in this campaign, did you not?

A. I don't know.

THE COURT: Is the letter you are referring to in evidence?

MR. KOHN: It is; Defendants' Exhibit No. 4.

THE COURT: It ought to be identified.

BY MR. LIPSITT:

Q. You don't know whether or not you used that word?

MR. HANDLER: The letter speaks for itself.

THE WITNESS: I don't recall.

BY MR. LIPSITT:

Q. Now, there is some evidence that at least one

union driver—Oh, incidentally, these letters were sent to the unions, were they not?

A. That's right.

Q. There is some testimony that one union driver interpreted your letter to mean that they couldn't cross the picket lines. Did any union men contact you and ask you whether or not they could cross the picket lines?

A. Yes.

Q. Do you know whether some of the men approached the picket line and then went away?

A. No, I don't.

Q. Now, I would like to call your attention also to Article VI, Section 3, on page 17. If you recall, you stated that in your opinion there was a dispute or controversy existing here between the men and the employer.

THE COURT: No, it was the union and the employer.

MR. LIPSITT: Excuse me.

THE WITNESS: I stated a labor dispute existed.

BY MR. LIPSITT:

Q. Now, it says here in Article VI, Section 3: "In any controversy with an employer, not covered by a local union agreement, the local union shall make all reasonable efforts to settle the same through negotiation—" Did you seek to negotiate with Mr. Weaver?

A. No.

MR. LIPSITT: That's all.

BY MR. KOHN:

Q. You say that you sent these letters out that are Defendants' Exhibit No. 4?

A. I said I didn't know.

MR. HANDLER: He said either he or the President, Mr. Long.

BY MR. KOHN:

Q. Don't you know whether you made up this letter or not?

A. Is my signature to that? I can't recall.

Q. I ask you who dictated that letter?

A. Mr. Long and myself got it together but I don't recall who signed it.

Q. But you and Mr. Long worked it up?

A. Absolutely.

MR. KOHN: All right, that's all. We rest.

MR. HANDLER: May I ask the witness a question?

Redirect Examination

BY MR. HANDLER:

Q. Mr. Kline, on the last hearing you testified that Local 776 required membership in the union 30 days after employment, pursuant to an election by the National Labor Relations Board. Did the National Labor Relations Board issue a certification?

MR. LIPSITT: He has that in over our objection.

MR. KOHN: May it please your Honor, I don't think that is a proper question. He has been asked this and it has been objected to. It is already on the record.

MR. HANDLER: I will withdraw it.

BY MR. HANDLER:

Q. You said that the Labor Relations Board authorized you to make such conditions in the freight industry in Harrisburg. Do you recall that testimony?

MR. KOHN: We object to that. It is in the record.

It is a question whether or not he recalls it. It is in the testimony and we agree that it is in the testimony as Mr. Handler read it.

MR. HANDLER: Well, then I will ask the witness whether he has available for production a certificate by the National Labor Relations Board authorizing 776 to maintain union shop conditions as provided for by the National Labor Relations Act as testified by this witness at the last hearing.

MR. KOHN: We would object to that on this ground: I thought we were through with the testimony, and if Mr. Handler is going to ask about National Labor Board certificates, and what not, that have no relevancy to the facts here presented, if the Court permits it, I am going to ask for another continuance to go into matters over which I have no control. We say it is irrelevant and immaterial

MR. HANDLER: Now, if the Court please, at the last—as far as Mr. Kohn having no knowledge at all at the last hearing—this witness testified that this union held a certificate from the National Labor Relations Board.

MR. KOHN: We say that it has no connection. He testified that he had one.

MR. HANDLER: All we are asking is leave to offer for the purposes of this record that physical certification.

THE COURT: When the testimony was given in the first place, was there any objection made and did we make a ruling?

MR. HANDLER: I think you reserved ruling. Mr. Kohn asked that the question be stricken on the ground

that what the policy is has no relevancy in this case and would in no event control the facts here. Then the Court said, "We are going to strike out the question and answer and note an exception for the defendants."

MR. KOHN: Now they want to open it up and present something in addition.

MR. HANDLER: Well, I would like to make an offer and I would like to have the physical document for the purpose of making the offer.

Let us just mark it for identification, make an offer and let the Court rule on it.

Will you mark this for the purpose of identification as Defendants' Exhibit No. 6?

(Document presented and marked for identification as Defendants' Exhibit No. 6.)

MR. HANDLER: We will make an offer and let the Court rule on it if the Court permits us.

THE COURT: Make your offer.

MR. HANDLER: If the Court please, we should like to offer in evidence Defendants' Exhibit No. 6, the same being a certification issued by the National Labor Relations Board in case No. 4-UA-596. The purpose of this offer is to provide the best evidence to support the statement made by this witness at the last hearing that the Local Union's policy with reference to the requirement of union membership as a condition of employment was predicated upon a certificate issued by the N. L. R. B. as result of a union shop referendum. The parties in these proceedings are the Truck Owners Associations of York, Lancaster and Harrisburg, Pa., employers, and Teamsters, Chauffeurs, Warehousemen and Helpers of

America, A. F. L., Locals 430, 771 and 776, petitioners; which certification covers all the employers in the Harrisburg area under contract with Local Union 776.

I want to amend that by saying, in the motor freight carrier industry in the Harrisburg area.

That is our offer.

MR. KOHN: May it please your Honor, I have already objected to the question, which has been ruled out, and now they are trying to get in by the back road by presenting a certificate and then Mr. Handler placing an interpretation upon that certificate.

In the first place, the interpretation is a matter for the Court, if you do admit it, and not a matter for Mr. Handler to say what it means. There is no testimony on the record in regard to this, because your Honor has ruled it out. Next, we say it has no relevancy to our particular set of facts; and, lastly, we say it doesn't even refer to any of the two parties plaintiff here involved, and we ask your Honor not to admit it because no factual or legal significance can be attached thereto, there being no testimony on the record in regard thereto.

MR. LIPSITT: I will concur in Mr. Kohn's objections, because there is nothing in the testimony to show that George W. Weaver and Son is involved in any certification from the National Labor Relations Board to hold an election.

MR. HANDLER: May I just say, for the purposes of the record, that the offer was made with reference to both these cases; not just one.

MR. LIPSITT: Well, he objected and I will object for Weaver.

THE COURT: The Court has not seen the Exhibit.

MR. KOHN: I am sorry, your Honor.

THE COURT: Apparently Defendant's Exhibit No. 6 is merely a certification of the results of a union authorization wherein the Teamsters Union here involved, after an election held by the employees of certain trucking employers, voted to have the Union as their bargaining representative.

MR. HANDLER: The last statement is an incorrect statement but I shan't get into any argument. It is a union shop referendum.

THE COURT: It says, "Pursuant to authority vested in the undersigned by Section 5 of the Agreement for Consent Election and by the National Labor Relations Board, the undersigned hereby certifies that the required majority of the employees eligible to vote have voted to authorize Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L. Locals 430, 771 and 776 to make an agreement with the employer"—. Now, there was evidently an election of employees.

MR. KOHN: It wasn't in ours.

MR. LIPSITT: It wasn't in ours.

THE COURT: The employees of these two plaintiffs did not vote in this particular matter. It is difficult for me to see the relevancy in the issue now before us. If the majority of the employees of either of these two plaintiffs had voted to authorize this union to represent them, then it might be relevant.

MR. HANDLER: Well, if your Honor please, I just offered it to provide the best evidence that was required in connection with the answer of Mr. Kline, which I

will say you struck from the record. I want the offer on the record. And I took exception to the Court's ruling on the direction to strike, and I don't want the Court to ultimately say it was correct in its ruling because we didn't present the best evidence. The statement made by Mr. Kline is that it is the policy of Local 776, as far as union membership of persons employed in the freight transportation industry, is that "we require membership in the union 30 days after employment, pursuant to an election by the National Labor Relations Board, and only after such election do we have union shop clause in our contracts." And I am offering that as the best evidence to corroborate the statement made by him.

THE COURT: And for no other purpose?

MR. HANDLER: No other purpose. In other words, if the Court was right in the striking of that other question and answer on the grounds of relevancy, then the Court will still be right after this is offered and even if this were admitted, because I am only offering it as the best evidence to support that answer. I don't want that answer ultimately ruled out in this case because we didn't produce the best evidence to support it.

MR. KOHN: It is not the best evidence. It is not certified. There is nobody here to identify it, and we object to it on that ground—without proper identification.

MR. HANDLER: That is issued only by the regional director.

MR. KOHN: I don't care if it is issued by the President of the United States.

MR. HANDLER: I am willing to let the Court rule it out on your grounds.

THE COURT: There was no election by secret ballot

of the employees of the plaintiffs in the two cases we have before us. In view of this fact, we think that Defendant's Exhibit No. 6 is irrelevant. Therefore, we sustain the objection in each of the two cases to the offer, and note an exception for the defendant.

MR. HANDLER: Thank you. We rest.

MR. KOHN: We rest, your Honor.

THE COURT: Well, gentlemen, within thirty days after the testimony has been transcribed and lodged you will file your requests for findings of fact and conclusions of law, and put the case on the argument list.

TESTIMONY CLOSED.

I hereby certify that the evidence and proceedings were fully and accurately contained in the stenographic notes taken by me in the above cause, and that this copy is a true and correct transcript of the same.

/s/ DEWEY SANFER,
Official Stenographer.

The foregoing record of the proceeding upon the hearing of the within cause is hereby approved and directed to be filed.

/s/ PAUL G. SMITH,
Judge.

X.

STIPULATION AND ORDER

GEORGE W. WEAVER & SON, INC.

Plaintiff

vs.

TEAMSTERS CHAUFFEURS and HELPERS LOCAL UNION No. 776 (AFL) ED LONG, PRESIDENT, ALLEN KLINE, BUSINESS MANAGER, ITS OTHER OFFICERS AND AGENTS

Defendants

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

Sitting in Equity

No. 1883 Equity Docket

STIPULATION

WHEREAS, heretofore two bills of complaint were filed in the Court of Common Pleas of Dauphin County, Sitting in Equity, the one to No. 1883 Equity Docket by George W. Weaver & Son, Inc., plaintiff, against Teamsters Chauffeurs and Helpers Local Union No. 776 (AFL), Ed Long, President, Allen Kline, Business Manager, its other officers and agents, defendants, and the other to No. 1884 Equity Docket by Joseph Garner and A. Joseph Garner, trading as Central Storage and Transfer Company, plaintiffs, against the same defendants; and

WHEREAS, the prayer of both bills is to restrain certain picketing, peaceful in nature and averred by

the defendants in each case to be for organizational purposes and, therefore, legal and otherwise not subject to restraint by this Court; and

WHEREAS, both actions, which involve the application of the same legal principles, were tried together and in each action the Chancellor granted a preliminary injunction restraining the picketing; and

WHEREAS, the Chancellor is prepared within the next several weeks to file his adjudication in the action brought by No. 1884 Equity Docket.

NOW, THEREFORE, it is hereby stipulated and agreed by and between William W. Lipsitt, Esq., of Shelley and Reynolds, and Sidney G. Handler, Esq., of Douglass and Handler, respectively attorneys for the plaintiff and the defendants in the action brought to No. 1883 Equity Docket, that the final order, judgment, decision or decree entered by this Court in the action brought to No. 1884 Equity Docket, or, if any appeal be duly taken therefrom by either plaintiff or defendants, the final order, judgment, decision or decree entered, or directed to be entered, by the Court last resorted to by either of said parties, shall be conclusive, binding and determinative of all the issues raised by the pleadings and testimony in the above captioned action brought to No. 1883 Equity Docket.

WILLIAM M. LIPSITT, Esq. of
SHELLEY & REYNOLDS,
Attorneys for Plaintiff.

SIDNEY G. HANDLER, Esq. of
DOUGLASS & HANDLER,
Attorneys for Defendant.

ORDER OF COURT

AND NOW, July 5, 1951, the foregoing Stipulation of Counsel is approved and ordered filed.

By the Court,
/s/ PAUL G. SMITH,
Judge.

XI

ADJUDICATION AND NISI DECREE

BY THE CHANCELLOR:

This action was instituted by plaintiffs to enjoin defendants from picketing one of plaintiffs' places of business, which picketing plaintiffs averred in their bill was intended or calculated, by causing it immediate and irreparable damage, to coerce them to compel or require their employees to become members of defendant union.

Upon filing of the bill of complaint this Court granted a rule on defendants to show cause why a preliminary injunction as therein prayed for should not issue. Prior to the hearing on this rule, defendants filed an answer to the bill wherein they, further, moved to discharge the rule and dismiss the bill. Therein they averred, among other things, that the picketing in question was at all times conducted in a peaceful manner "for the sole purpose of appealing to the employees of Plaintiff Company to join the Defendant Union to gain union wages and working conditions"; that "such picketing is a lawful exercise of the right of freedom of speech as guaranteed by the Constitutions of the Commonwealth of Pennsylvania and the United States"; that "the loss to Plaintiff's business, if any, is not actionable nor is Plaintiff entitled to the relief prayed for because

Defendants' conduct and activity is lawful and proper"; and finally, that the bill of complaint should be dismissed because it "fails to allege facts constituting a cause of action within any of the exceptions to the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended."

After a full hearing on plaintiffs' rule, a preliminary injunction was granted solely on the only issues then before the Court as raised by plaintiffs' bill and defendants' aforesaid answer and motion to dismiss. Defendants thereupon filed exceptions to this action. These exceptions, at the request of defendants, were subsequently overruled without prejudice and never argued. The case then proceeded to final hearing, after which both parties filed requests for findings of fact and conclusions of law and submitted the matter to the Chancellor on briefs. Most of defendants' requests were predicated on the issues raised by their answer and motion to dismiss. Also therein, defendants questioned the jurisdiction of this Court to enjoin the picketing on the ground, as set forth, inter alia, in their 7th request for conclusions of law that "The plaintiff's business involves and it is engaged in interstate commerce thereby subjecting the controversy to the exclusive jurisdiction of the National Labor Relations Board pursuant to the provisions of the National Labor Relations Act of 1947."[1] However, it was not until sometime in July, 1951, and after we had written our adjudication, predicated solely on the issues raised in the bill, answer and motion to dismiss and under the as-

[1] The same issue was raised in the exceptions filed by defendants to the entry of the preliminary injunction. The issue could then have been decided expeditiously had defendants, as suggested by the Chancellor, placed these exceptions on the argument list to be passed upon by the Court en banc. Nevertheless, for some reason defendants did not choose so to do.

sumption that the defendants had abandoned it, that they, for the first time, pressed their contention that the National Labor Relations Board had exclusive jurisdiction in the instant controversy.

After consideration of all the testimony, including that given at the hearing on the rule to show cause which, by stipulation of counsel for all parties, was to be considered as though taken on final hearing, we make the following

Findings of Fact

1. Plaintiffs, Joseph Garner and A. Joseph Garner, trading as Central Storage and Transfer Company (hereinafter called "Central"), are engaged in the trucking and storage business with principal office at 11th and State Streets, Harrisburg, Pa.

2. Central, at the time of the filing of the Bill and for many years prior thereto, maintained terminal and platform facilities at the rear of the Reading Railroad Freight Station at 9th and Market Streets, Harrisburg, Pa.

3. At this terminal, Central operates a local freight pick-up and delivery service not only for the Reading Railroad Company and its trucking division, the Reading Transportation Company, with both of whom it has contracts, but also for approximately fifteen other trucking firms.

4. Central in the local pick-up and delivery service operates as a common carrier in the City of Harrisburg and, in certain instances, within a ten mile radius thereof. Otherwise, the incoming and outgoing freight deposited at the terminal by the Reading Railroad Company, the Reading Transportation Company, Central, or other trucking firms, is interchanged to other car-

riers for delivery to the point of destination outside of Central's territory.

5. Certain freight handled at Central's Reading pick-up and delivery terminal is shipped on the Reading Railroad from points outside the state to consignees in and about the City of Harrisburg where Central completes the chain of transportation from the point of origin to the point of destination on the Reading Railroad freight bill of lading. However, the picketing here in question did not prevent Central from making deliveries of these interstate shipments.

6. Defendants, Teamsters Chauffeurs and Helpers Local Union, No. 776 (hereinafter with its officers and agents called the "Union"), is an unincorporated labor organization with offices at 101 Pine Street, Harrisburg, Pa. It is a branch of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and is also affiliated with the American Federation of Labor. Ed Long and Allen Kline are respectively President and Secretary-Treasurer of the Union and its business agents.

7. The members of the Union are engaged as truck drivers and helpers in the freight trucking industry in which Central is also engaged.

8. Central has been in business for thirty years and presently employs twenty-four persons as truckers, helpers and platform men, four of whom are members of the Union.

9. During the time Central has been in business it never has had any controversy or labor dispute with its employees or any of them with respect to wages, hours or working conditions.

10. Approximately fifteen years ago a representative of the Union contacted Central for organizational purposes. Central then told the Union that it was up to the employees to join or not to join. A meeting between the Union representative and the employees was then arranged. However, nothing resulted therefrom. The Union never thereafter requested Central to enter into negotiations with it concerning the representation of Central's employees.

11. During the many years Central has been in business it has never in any way, directly or indirectly, put pressure on its employees to join or refrain from joining a labor organization or to engage or refrain from engaging in concerted activities for the purpose of collective bargaining.

12. Central has never objected to and presently has no objections to any of its employees joining the Union.

13. At no time has any question regarding representation of Central's employees been raised or decided.

14. The wages paid by Central to its employees are above the union scale for this area.

15. Under date of June 1, 1949, the Union sent a letter under the signatures of its President and Secretary-Treasurer, by registered mail, to Local Teamster Unions in communities in the neighborhood of Harrisburg such as York, Lancaster, Reading and Williamsport. This letter was as follows:

"Dear Sir and Brother:

"This Local Union is engaging in an organizing campaign the object of which is to enroll among our membership the truck drivers, helpers or warehousemen employed by a number of local dray and freight

carriers such as Merchants Delivery, Hill Express, Central Storage and Transfer, George Weaver, Montgomery & Company and Ward Trucking Company. "Our program is limited to an appeal to the employees of these and similar companies to join our Local Union. It is our intention to advertise this appeal by the use of pickets at the places of employment involved.

"In accordance with our usual practice we are bringing this to your attention. Since this will not create the usual strike situation, we are particularly anxious that you will not misunderstand the extent, object and purpose of our program and activities. It is limited strictly to that described in this letter.

"Appreciating as we do your usual willingness to lend a helping hand in any situation, we are, in view of the program limiting our activities to an appeal to the employees at their place of employment, and accordingly must request that your Local Union refrain from any activity in connection with these companies, and their employees in order that no one may misconstrue our objects and purposes."

16. Thereafter, on the morning of June 7, 1949, rotating pickets, two at a time, none of whom were employees of Central, were placed by the Union, one in front of Central's Reading loading platform and the other at the entrance thereto, carrying signs bearing the following legend: "Local 776 Teamsters Union (A. F. of L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions."

17. This type of picketing, which at all times was conducted in an orderly and peaceful manner, continued until preliminary enjoined on June 17, 1949.

18. At the time the Union placed the pickets there was no labor dispute between Central and its employees, none of whom were on strike.

19. Joseph Garner, one of the co-partners of Central, called Allen Kline by telephone about 10:20 on the morning of June 7, 1949, to inquire why the Union was picketing Central's Reading pick-up and delivery terminal. Kline replied "* * * nothing to that, * * * this is the means of advertising, * * *, instead of coming around and asking you for the names of each and every one of your employes, and we would go from door to door, which would mean a lot of time and effort, we are simply doing this to try to sell the men to join the Union."

20. During the conversation referred to in the preceding finding of fact, Garner told Kline that the presence of pickets was causing trailer loads to stay outside the picket line, to which Kline replied "I don't think any harm will come of it." Garner said, "Mr. Kline, there is harm, they are ruining our business." Again Kline said, "I don't think any harm is coming to you."

21. Thereafter on the morning of June 7, 1949, Garner called Kline a second time and again told him that the trailers were stopping at the pickets and would not drive through the line. Whereupon Kline replied, "I don't see any harm from this." At this time Garner also stated "You know, Mr. Kline, our place of business, our company owns building at 11th and State Street, where our men come in, and, I said, why don't you go down in front of our property which we own, rather than at the Reading Company, we don't own this place of business," to which Kline again replied "I don't think any harm will come of it."

22. On June 8 or 9, 1949, Joseph Garner talked to Edgar Long, President of the Union, who at the time was standing beside a picket. Garner asked the picket what his instructions were. Long replied that the pickets had no instructions. Garner then said to Long "Do you realize what harm this is doing?" However, Long made no reply and walked away.

23. The conversations set forth in findings of fact Nos. 19, 20, 21 and 22 above constitute the only conversations between the Garners and the officers and representatives of the Union with respect to the picketing here in question.

24. From the beginning of the picketing by the Union on June 7, 1949, or from the day thereafter, to the time the Court preliminarily enjoined the same on June 17, 1949, Central's Reading pick-up and delivery terminal did practically no business with unionized establishments such as the Reading Transportation Company, Shirk's Motor Express, West Shore Motor Express, Lancaster Transportation Company, Hartman's Transportation Company, Horn's Motor Express, Daily Motor Express and other interchange carriers, the truck operators of which refused to cross the picket line.

25. During the period of the picketing the business of Central at its Reading pick-up and delivery terminal fell off 95%, or approximately 250,000 lbs. of freight daily, with a resulting loss to it of between $400.00 to $500.00 per day.

26. The Union, other than as set forth in finding of fact No. 10, did not directly or indirectly contact Central in an effort to have it recognize the Union as the bargaining agent for its non-union employees or contact

such employees in an effort to have them become members thereof.

27. The Union at no time threatened, either directly or indirectly, to picket Central's Reading pick-up and delivery terminal if it did not compel its unorganized employees to join the Union. Neither did the Union make any demand on Central that it discharge these employees and hire union members in their place if they refused so to do.

28. The Union did not picket the places of business of neutral employers doing business with Central or in any other way attempt to coerce such neutral employers from transporting freight to and from Central's Reading pick-up and delivery terminal.

29. The Union did not induce or encourage concerted action by the employees of neutral employers to refuse to transport freight to and from Central's Reading pick-up and delivery terminal.

30. The teamster members of the Union and of neighboring Union affiliates refused to enter Central's Reading pick-up and delivery terminal solely by reason of the well established labor union practice not to cross a picket line placed by the Union or by one of its affiliates.

31. The contracts made by the Union and its Union affiliates with freight trucking concerns provide that union employees cannot be discharged if they refuse to go through a picket line.

32. Under the Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, adopted August 11, 1947, which governs the Union here, a member of the said

Union cannot be penalized for passing such pickets as were placed by the Union at Central's terminal because no strike existed within the purview of section 6, page 58 of the Constitution.

33. The policy of the Union with reference to union membership of persons employed by employers in contractual relations with the Union is to require membership in the said Union 30 days after employment pursuant to a certificate of authority issued by the National Labor Relations Board.

34. Central's operations at its Reading pick-up and delivery terminal were unique in that the great bulk of the business there transacted by it was with unionized trucking concerns.

35. The Union knew that, if the employees of unionized trucking concerns doing business at said terminal refused to pass a picket placed at the entrance thereto, Central would sustain large financial losses and its business thereat would be ruined with ultimate loss of its terminal rights.

36. If the picketing had not been enjoined, Central would have lost not only its contract with the Reading Transportation Company but also its terminal facilities with the Reading Railroad Company.

37. Central's business is highly competitive and, by reason of the picketing, Central lost not only the good will of certain of its customers built up during many years but also business which has gone to its competitors who operate in the same locality.

38. The officers of the Union knew that each day the picketing here in question continued Central would sustain substantial business losses.

39. The acts and conduct of the Union were an abuse of the right to picket rather than a means of peaceful and truthful publicity.

40. The Union, its officers and agents, carried the picketing here in question beyond the field of persuasion for organizational purposes into the field of intimidation or business compulsion deliberately designed to coerce Central, by causing it substantial business losses, to compel or require its employees to become members of the Union.

Discussion

In the case at bar the equitable jurisdiction of this Court over the subject matter has been challenged by the Union. This Court assumed jurisdiction and heretofore entered a preliminary injunction restraining the Union from picketing Central's pick-up and delivery terminal located at the Reading Railroad Freight Station, 9th and Market Streets, Harrisburg, Pa., hereinafter sometimes called the "Terminal," and the entrances thereto. This action was predicated solely on the only issues then before the Court as raised by plaintiffs' bill, defendants' answer thereto and motion to dismiss. These issues were whether the picketing by the Union, although at all times peaceful and allegedly for organizational purposes, was a lawful exercise of the constitutional guaranty of free speech or whether said picketing was in furtherance of an unlawful purpose and, therefore, subject to restraint by this Court under its general equity jurisdiction unrestricted by the Pennsylvania Labor Anti-Injunction Act of 1937, as amended.

After consideration of all the testimony given at the hearing held on Central's rule to show cause as it

related to these issues, we concluded that the Union had carried the picketing here in question beyond the field of persuasion for organizational purposes into the field of intimidation deliberately designed to coerce Central, by causing it substantial business losses, to compel or require its employees to become members of the Union; that the picketing was for an unlawful purpose; and that, therefore, it was not protected by the constitutional guaranty of free speech but was subject to restraint by this Court.

Some months after the picketing was preliminarily enjoined, the Union, for the first time, pressed its contention that Congress had vested in the National Labor Relations Board exclusive jurisdiction to investigate, approve or take action to forbid the conduct of the Union here in question and that, therefore, this Court had no power to act in the matter.

Certain of Central's activities are in interstate commerce because they form a link to an interstate railroad serving Harrisburg. (See finding of fact No. 5). With respect to such activities, our State Supreme Court in Pennsylvania Labor Relations Board v. Frank, 362 Pa. 537, arising under the Wagner Act, quoted and applied, pp. 545-6, the language of the Supreme Court of the United States in National Labor Relations Board v. Fainblatt, 306 U. S. 601, 606, 59 S. Ct. 668, as follows:

> "* * *. 'The power of Congress to regulate interstate commerce is plenary and extends to all such commerce be it great or small . . . The language of the National Labor Relations Act seems to make it plain that Congress has set no restrictions upon the jurisdiction of the Board to be determined or fixed exclusively by reference to the volume of interstate commerce involved . . . The Act on its

face thus evidences the intention of Congress to exercise whatever power is constitutionally given to it to regulate commerce by the adoption of measures for the prevention or control of certain specified acts—unfair labor practices—which provoke or tend to provoke strikes or labor disturbances affecting interstate commerce. Given the other needful conditions, commerce may be affected in the same manner and to the same extent in proportion to its volume, whether it be great or small. . . .' See also separate opinion of Mr. Justice Frankfurter in Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U. S. 767, 782, 67 Sup. Ct. 1026."

Nevertheless, the mere fact that certain of Central's activities may involve interstate commerce is not conclusive against the jurisdiction of this Court if the Union tactics which we have found to have been coercive are neither forbidden by federal statute nor legalized or approved thereby: International Union, United Automobile Workers v. Wisconsin Board, 336 U. S. 245, 69 S. Ct. 516 (1949).

Since we have found that Central is engaged in interstate commerce, did Congress vest in the National Labor Relations Board exclusive jurisdiction to investigate, approve or take action to forbid the conduct of the Union here in question or is such conduct still governable by this state? The jurisdiction of this Court over the subject matter of the instant proceeding depends chiefly upon the answer to this question.

It is well settled that whenever the employer-employee relationship is one over which Congress has the power of regulation and with regard to which Congress has acted, state power is suspended and cannot consti-

tutionally be exercised unless Congress has otherwise provided and, further, that the criterion to determine the validity of the exercise of state power is not whether the agency administering the federal law has acted upon the relationship in a given case but rather whether Congress has asserted its power to regulate such relationship: Bethlehem Steel Company v. New York State Labor Relations Board, 330 U. S. 767, 67 S. Ct. 1026 (1947); Pittsburgh Railways Company, etc., Employees' Case, 357 Pa. 379 (1947).

Accordingly, where a case involves the employer-employee relationship in the field of interstate or foreign commerce regulated by the National Labor Relations Act of 1935 (29 U. S. C. A. §151 et seq.), referred to hereinafter as the "Wagner Act," as amended by the Labor Management Relations Act of 1947 (29 U. S. C. A. Pocket Parts, §141 et seq.) referred to hereinafter as the "Taft-Hartley Act," the great weight of authority holds that the National Labor Relations Board has exclusive jurisdiction and state courts and agencies have none except to the extent that the federal law does not attempt to cover a particular part of that field or the NLRB has ceded jurisdiction thereover to a state.[2]

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[2] Under the Wagner Act primary jurisdiction of unfair labor practices as therein specified on the part of an employer engaged in interstate commerce was given to the NLRB thereby divesting the jurisdiction of this state over such practices: Pennsylvania Labor Relations Board v. Frank, 362 Pa. 537. However, the Wagner Act did not attempt to regulate unfair practices on the part of a labor union. Therefore, if this case had arisen while the Wagner Act was in force we are satisfied that, even though Central was engaged in interstate commerce, this Court had jurisdiction of the subject matter under the principles applied by our State Supreme Court in Wilbank et ux. v. Chester and Delaware Counties Bartenders, Hotel and Restaurant Employees Union et al., 360 Pa. 48 (1948), Certiorari denied, 336 U. S. 945, 69 S. Ct. 812, and Phillips et al. v. United Brotherhood of Carpenters and Joiners of America, et al., 362 Pa. 78 (1949). It

Thus the provisions of the Wagner Act, as amended by the Taft-Hartley Act, do not permit concurrent regulation of peaceful strikes for higher wages in industries affecting commerce since Congress has occupied this field and closed it to state regulation: Amalgamated Ass'n. of Street, Electric Railway & Motor Coach Employees of America, Div. 998, et al. v. Wisconsin Employment Relations Board, 340 U. S. 383, 71 S. Ct. 359 (1951). Again, the United States Supreme Court has held in five other cases that the state law could not consistently stand with federal law. In International Union of United Auto Workers v. O'Brien, 339 U. S. 454, 70 S. Ct. 781, (1950), a state act covering all industry permitted strikes at a different time than the federal act and required, unlike federal law, a majority authorization for any strike. In Plankinton Packing Co. v. Wisconsin Board, 338 U. S. 953, 70 S. Ct. 491 (1950), a state superimposed upon federal outlawry of conduct as an "unfair labor practice" its own finding of unfairness. In LaCrosse Telephone Corp. v. Wisconsin Board, 336 U. S. 18, 69 S. Ct. 379, (1949), a conflict was found in the bargaining units determined under state and federal acts. In Bethlehem Steel Co. v. New York Labor Board, supra, the state recognized a foremen's union contrary to the established policy of the NLRB. And in Hill v. State of Florida ex rel. Watson, 325 U. S. 538, 65 S. Ct. 1373, (1945), the state was found to have interfered with the freedom in selecting bargaining agents as guaranteed by the federal act.

It thus appears that in all of the cases just cited there was a direct conflict between state and federal legisla-

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was not until Congress amended the Wagner Act by the Taft-Hartley Act that unfair labor practices on the part of a labor union as specified in section 8 (b) thereof (29 U.S.C.A. Pocket Parts §158) were subjected to the primary jurisdiction of the NLRB.

tion and the federal act so collided with the state law as to displace it. In the case at bar, however, we have no conflict between the Taft-Hartley Act and any act of this state. The sole question here is whether, by reason of the provisions of the Taft-Hartley Act, this Court in the exercise of its general equity jurisdiction no longer has the power to restrain, at the instance of a private individual and under the facts as we have found them, peaceful picketing allegedly for organizational purposes or whether such individual must seek such relief through the NLRB. Neither our State Supreme Court nor the United States Supreme Court appear to have directly passed upon this question. And, until one of these Courts does, we are constrained, for the reasons hereinafter set forth, to hold that this Court has jurisdiction. In so finding we have not overlooked the so-called "Supremacy Clause" Article VI, Clause 2, of the Constitution of the United States whereunder the laws of Congress take precedence over any contrary state law. Neither have we overlooked the so-called "Negative Implications of the Commerce Clause," the theory of which is that when Congress, in a law regulating interstate commerce, has indicated an intention "to occupy" the field there is no longer room for state legislation in that field. But we are not here dealing with state legislation colliding with federal legislation, and the question still remains as to whether Congress has actually occupied the field involved in the instant controversy.

The Taft-Hartley Act prohibits some concerted labor activities and regulates others in considerable detail. The act contains two provisions which the Union contends, as we understand its position, operate to vest exclusive jurisdiction in the NLRB. The first of these pro-

visions is section 10 (a) (29 U. S. C. A. Pocket Parts §160).[3]

The second of these provisions is Section 7 (29 U. S. C. A. Pocket Parts §157).[4] Section 10 (a) has been generally construed as giving the NLRB primary jurisdiction over all cases involving unfair labor practices on the part of a labor organization as specified in section 8 (b) thereof (29 U. S. C. A. Pocket Parts §158). The Union avers that, if it was guilty of any unfair labor practices—a fact denied by it—such practices violated section 8 (b) (1) (A) and (B) as well as section 8 (b) (4) (A) and (B) of the Taft-Hartley Act.[5] However, the phrase "to restrain or coerce," as

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[3] Section 10 (a), insofar as here material, provides:

"(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. * * *."

[4] Section 7, insofar as here material, provides:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities * * *."

[5] Section 8 (b), insofar as here material, provides:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: * * *; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

* * * * * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to * * * transport, or otherwise handle * * * any * * * materials or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease * * * transporting, or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other

used in section 8 (b) (1) (A), has been construed by the NLRB not to include primary peaceful picketing but only such picketing as is accompanied by violence or threats, overt or implicit. Thus in United Brotherhood of Carpenters and Joiners, Local 74 (AFL), et al. and Ira A. Watson Co., d.b.a. Watson's Specialty Store, 80 NLRB, No. 91, Case No. 10-CC-1, (1948), CCH Labor Law Reporter, NLRB Decisions 1948-49, par. 8374, the Board adopted the finding of the trial examiner that section 8 (b) (1) (A) was designed to prevent the more violent types of restraint or coercion by unions, such as "goon squads," threats of violence as well as other types of threats, and mass picketing; not the more subtle and indirect types of conomic coercion of non-union employees through their employer's loss of business.[6] To the same effect, see also Ryan Construction Corporation and United Electrical, Radio and Machine Workers of America et al., 85 NLRB, No. 76, Case No. 35-CC-7 (1949), CCH Labor Law Reporter, NLRB Decisions 1949-50, par. 9137; United Brotherhood of Carpenters and Joiners of America, District Council of Kansas City, Mo., and Vicinity (AFL), et al. and Wadsworth Building Co., Inc., et al., 81 NLRB, No. 127, Case No. 17-CC-1 (1949), CCH Labor Law Reporter, NLRB Decisions 1948-49, par. 8657, at page 9184. Upon application of these Board rulings it necessarily follows that, since the Union's organizational picketing was peaceful and attended by no force, violence or threats of any kind, such picketing was not an unfair labor practice within the meaning of section

employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees • • •."

[6] This case was later affirmed on other grounds by the U. S. Supreme Court. See 341 U. S. 707, 71 S. Ct. 966, (1951).

8 (b) (1) (A). Likewise, since the requirements of restraint and coercion apply equally to section 8 (b) (1) (B) and since the Union at no time, either before or after it placed the pickets, made any demands on Central to recognize it for the purpose of collective bargaining or the adjustment of grievances, in our opinion, the Union was not guilty of any unfair labor practice within the meaning of section 8 (b) (1) (B). Neither can we find that the Union was guilty of any unfair labor practices as specified in sections 8 (b) (4) (A) or (B). And this because the Union did not picket neutral employers doing business with Central or in any other way prevent such neutral employers from transporting freight to and from Central's Reading pick-up and delivery terminal; and neither, under our finding of fact No. 29, did the Union induce or encourage concerted action by the employees of neutral employers to refuse so to do. See also Sperry v. Building & Construction Trades Council of Kansas City et al., 15 Labor Cases, par. 64,836, (1948), wherein the United States District Court, District of Kansas, held that picketing an employer for the purpose of causing him to employ only union members does not constitute an unfair labor practice in violation of sections 8 (b) (4) (A) or (B), even though such picketing causes the employees of other employers to refuse to deliver supplies to the picketed employer.

We will now consider section 7 of the Taft-Hartley Act which the Union contends is a catch-all intended to prohibit state regulation of all labor activities in interstate commerce not regulated by section 8 (b). Under this construction a state could neither regulate nor control any concerted labor activities covered by section 8 (b) nor any such activities left unregulated by said section. We cannot adopt this contention. To do

so would be directly in the teeth of the decisions of the Supreme Court of the United States. Thus in International Union, United Automobile Workers v. Wisconsin Board, 336 U. S. 245, 69 S. Ct. 516 (1949), hereinafter called the "Briggs-Stratton Case," being return of certiorari to the Supreme Court of the State of Wisconsin, it was held that Congress in both the Wagner and the Taft-Hartley Act designedly left open an area for state control; that recurrent or intermittent stoppages of work by employees was neither forbidden by these acts nor was such conduct legalized and approved thereby; and that, therefore, the state police power was not superseded by the federal legislation over a subject matter normally within the exclusive power of a state and reachable by federal regulation only because of its effects on interstate commerce which Congress may regulate. In so holding, Mr. Justice Frankfurter, speaking for the majority of the Court, 336 U. S., said at page 253:

> "Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied. The Labor Management Relations Act declared it to be an unfair labor practice for a union to induce or engage in a strike or concerted refusal to work where an object thereof is any of certain enumerated ones. §8 (b) (4), 61 Stat. 140, 141, 29 U. S. C. §158 (b) (4). Nevertheless the conduct here described is not forbidden by this Act and no proceeding is authorized by which the Federal Board may deal with it in any manner. While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no

power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. * * *."

And at page 254:

"* * *. There is no existing or possible conflict or overlapping between the authority of the federal and state Boards, because the federal Board has no authority either to investigate, approved or forbid the union conduct in question. This conduct is governable by the state or it is entirely ungoverned."

Thereupon, after considering and discussing the purpose and effect of section 7 the Court held that Congress had not given employees or labor unions any right to engage in unlawful or other improper conduct and in conclusion said at page 265:

"We find no basis for denying to Wisconsin the power, in governing her internal affairs, to regulate a course of conduct neither made a right under federal law nor a violation of it and which has the coercive effect obvious in this device."

See also Allen-Bradley Local v. Wisconsin Board, 315 U. S. 740, 62 S. Ct. 820 (1942).

Upon application of the principles laid down in the Briggs-Stratton case we are of the opinion that the factual situation now before us falls within the area designedly left open by section 7 of the Taft-Hartley Act to state control. A very recent case directly in point is Kincaid-Webber Motor Company v. Quinn et al., decided July 9, 1951, by the Supreme Court of the State

of Missouri and reported in 20 CCH Labor Cases, par. 66,424. Here defendants requested plaintiff, a motor car dealer, to recognize their union as the exclusive bargaining agent for plaintiff's employees. At an election held by the NLRB on petition of defendants made at the suggestion of the plaintiff, the union lost out. The next morning a picket was placed by the defendants before plaintiff's place of business carrying a sign informing the public that plaintiff was non-union. By reason thereof, plaintiff sustained substantial losses and brought an action in the state court to enjoin the picketing. Therein, plaintiff averred that the picketing was for an unlawful purpose since it was intended to coerce plaintiff to recognize a labor organization rejected by its employees. Defendants, on the contrary, contended, as does the Union in the instant case, that the picketing was for a lawful purpose; that the state court had no jurisdiction of the subject matter which jurisdiction was vested exclusively in the NLRB; and that any injunction would be an abridgement of freedom of speech in violation of defendants' constitutional rights. The lower court enjoined the union's picketing. The Supreme Court of Missouri in affirming this judgment said, page 79,746:

> *. Injunctions against pickets have been sustained in many cases under both the Norris-LaGuardia and Taft-Hartley Acts. The cases usually involved the question of whether or not the purpose of the picket was to coerce the performance of an unlawful act. See Fred Wolferman, Inc. v. Root, 356 Mo. 976, 204 S. W. (2d) 733, l. c. 735, 736 (5) (6,7) (13 Labor Cases par. 64,008). In that case this Court en banc said: 'Both the answer and the evidence do disclose that one of the purposes for the picketing is for giving information to the

public. While we assume that purpose is lawful still when it is coupled, as it is here, with unlawful purposes, the fact one of several purposes is lawful does not make the picketing lawful. Picketing for both lawful and unlawful purposes is unlawful. See Restatement Torts Sec. 796. Cf. Baush Machine Tool Co. v. Hill, 231 Mass. 30, 120 N. E. 188; Folsom Engraving Co. v. McNeil, 235 Mass. 269, 126 N. E. 479.' To the same effect see State ex rel. Allai v. Thatch, 361 Mo. 190, 234 S. W. (2d) 1, l. c. 9 (8,9) (19 Labor Cases par. 66,042), where it was contended that under the Taft-Hartley Act a state court had no jurisdiction to issue an injunction in such cases; this Court en banc there said: 'But the foregoing Federal statutes do not preempt the jurisdiction of the State courts in all instances. It has been held by this and other State courts and the United States Supreme Court that while peaceful picketing is generally permissible under the Fourteenth Amendment, Const. U. S. for a lawful and proper purpose, yet such picketing may be enjoined when the purpose is unlawful; * * *.' See also Empire Storage & Ice Company v. Giboney, 357 Mo. 671, 210 S.W. (2d) 55 (13 Labor Cases par. 64,009, affd. 336 U. S. 490, 69 S. Ct. 684 (16 Labor Cases par. 65,062).

"Appellants in their reply brief cited Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees v. Wisconsin Employment Relations Board, 71 S. Ct. 359 (19 Labor Cases par. 66,194), as holding that a state court does not have jurisdiction of this case. As we read the case it is not in point and does not so hold. That case held the Wisconsin Public Utility Anti-Strike Law to be in conflict with the Taft-Hartley Act and

therefore not enforceable. In the case before us no state regulation is involved.

"The contention of defendants that the injunction herein violates their constitutional rights must be denied. In the Wolferman case, supra, 204 S. W. (2d) l. c. 736, 737 (8, 9) (13 Labor Cases par. 64,008), it was ruled that freedom of speech does not include the right to picket to persuade an employer to violate a statute. The question was considered at length and no useful purpose would be served by again discussing the point."

In the instant case there was no labor dispute between Central and its employees, none of whom were on strike. Neither Central nor the Union in any way attempted to restrain or coerce these employees in their right to self-organization guaranteed by section 7. Therefore, we cannot see how this section has any application to the facts of the case at bar. As said by Mr. Justice Frankfurter, speaking for the majority of the Court in Hughes et al. v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 339 U. S. at 465, (1950): "However general or loose the language of opinions, the specific situations have controlled decision." And the specific situation now before us is readily distinguishable from the specific situations before the United States Supreme Court in the O'Brien and other cases heretofore cited wherein that Court considered and discussed section 7 in striking down injunctions issued by state courts under state laws. Further, the instant situation is not controlled by certain other cases relied upon by the Union involving unfair labor practices under the Taft-Hartley Act.[7] Also, on the question of

[7] Gerry of California v. Superior Court, 194 P. 2d 699, Calif. Supreme Ct. (1948); Ex Parte De Silva, 199 P. 2d 6, Calif. Supreme

jurisdiction of a state court, see Robinson, d.b.a. Robinson Freight Lines v. Chauffeurs, Teamsters, Warehousemen and Helpers, Local No. 621, et al., 20 CCH Labor Cases, par. 66,463, Tenn., Ct. of Apps., (1951); Montgomery Building and Construction Trades Council, et al. v. Ledbetter Erection Company, Incorporated, 20 CCH Labor Cases, par. 66,407, Supreme Court of Alabama (1951); Standard Grocer Co. v. Local No. 406 of AF of L, 32 N. W. 2d, 519, 321 Mich. 276, (1948).

Accordingly, for the reasons hereinbefore set forth, we hold that primary jurisdiction over the conduct of the Union here in question did not vest in the NLRB under either section 10 (a), section 7 or any other provision of the Taft-Hartley Act.

The Union's two remaining contentions are first, that the picketing here in question was a lawful exercise of the constitutional guaranty of free speech, and second, that Central's bill should be dismissed because it failed to allege facts constituting a cause of action within any of the exceptions to the Pennsylvania Labor Anti-Injunction Act. We shall consider these questions together as they appear to be interrelated.

Under the latest pronouncements of the Supreme Court of the United States and of this state, it is now well settled that peaceful picketing of an employer's place of business for organizational purposes by unions whose members are engaged in the same trade or in-

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Ct. (1948); Pocahontas Terminal Corporation v. Portland Building and Construction Trade Council et al., 93 F. Supp. 217, U. S. Dist. Ct., Dist. of Maine, Southern Division (1950); Norris Grain Co. v. Nordaas, 46 N. W. 2d 94, Minn. Supreme Court (1950); rehearing denied, 19 CCH Labor Cases, par. 66,201 (1951); Goodwins, Incorporated et al. v. Hagedorn, et al., 19 CCH Labor Cases, par. 66,272, N. Y. Supreme Ct., N. Y. Co., (1951), affirmed, 20 CCH Labor Cases, par. 66,409, N. Y. App. Div., (1951). Attention is directed to the dissenting opinion by Dore, J. in the Goodwins case, reported in 20 CCH Labor Cases, pp. 79,692-4.

dustry as that of the picketed employer is, under certain conditions, an exercise of the right of free speech guaranteed by the Fourteenth Amendment to the Constitution of the United States. However, under these decisions it is equally well settled that peaceful picketing loses the protection of the constitutional guaranty and is not beyond the control of the State if the purpose which it seeks to effectuate is unlawful or otherwise steps over the line from persuasion to coercion: Hughes et al. v. Superior Court of California, supra; International Brotherhood of Teamsters, etc. Union, Local 309, et al. v. Hanks et al., 339 U. S. 470, 70 S. Ct. 773 (1950); Building Service Employees International Union, Local 262, et al. v. Gazzam, 339 U. S. 532, 70 S. Ct. 784 (1950); Wilbank et ux. v. Chester and Delaware Counties Bartenders, Hotel and Restaurant Employees Union et al., 360 Pa. 48 (1948), certiorari denied, 336 U. S. 945, 69 S. Ct. 812; Phillips et al. v. United Brotherhood of Carpenters and Joiners of America et al., 362 Pa. 78 (1949).[3] Cf. Kincaid-Webber Motor Company v. Quinn et al., supra.

The nature of picketing and the legal limits thereof were considered in the Hughes case, 339 U. S. at pp.

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[3] The Hughes, Hanke and Gazzam cases were decided by the Supreme Court of the United States after the picketing in the instant case had been preliminary enjoined. Therein the Court held that the Fourteenth Amendment did not bar a state from the use of injunction to prohibit picketing as, in the Hughes case, of a store solely in order to secure compliance with a demand that the store's employees be in proportion to the racial origin of its then customers, or as in the Hanke case, of a business conducted by the owner himself without employees in order to secure compliance by him with a demand to become a union shop, or, as in the Gazzam case, for the purpose of compelling the employer to coerce his employees choice of a bargaining representative. The facts of the Wilbank and Phillips cases, decided by the Supreme Court of this state prior to the issuance of the preliminary injunction in the instant case, are somewhat similar to the facts of the Gazzam case.

464-5, wherein Mr. Justice Frankfurter, speaking for the United States Supreme Court, among other things, said:

"'The domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states,' Palko v. Connecticut, 302 U. S. 319, 327, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' Mr. Justice Douglas, joined by Black and Murphy, JJ., concurring in Bakery & Pastry Drivers & Helpers Local v. Wohl, 315 U. S. 769, 775, 776. Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word. * * * "

Further, in the Hughes case, 339 U. S. at pp. 465-6, Mr. Justice Frankfurter said:

"* * * * * * we have found that because of its element of communication picketing under some circumstances finds sanction in the Fourteenth Amendment. Thornhill v. Alabama, 310 U. S. 88; American Federation of Labor v. Swing, 312 U. S.

321; Bakery & Pastry Drivers & Helpers Local v. Wohl, 315 U. S. 769; Cafeteria Employees Union v. Angelos, 320 U. S. 293. However general or loose the language of opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. (citing authorities). 'A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual.' Bakery & Pastry Drivers & Helpers Local v. Wohl, supra at 775."

To the same effect see also the Gazzam case, 339 U. S. at p. 537, wherein it was said:

"* * *. But since picketing is more than speech and establishes a locus in quo that has far more potential for inducing action or nonaction than the message the pickets convey, this Court has not hesitated to uphold a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity. * * *."

The Wilbank and Phillips cases, supra, also hold that free speech is not involved where the labor objective of the picketing is unlawful. In each of these cases a union picketed an employer's place of business. The picketing was peaceful. However, its purpose was to force the employer to compel his employees to join a certain union or to discharge them and employ others who were members thereof. Such purpose was held to be unlawful and subject to restraint. These cases are, further, au-

thority for the proposition that coercion is not necessarily limited to threats of violence to a person but may be quite as effective by causing him substantial business losses, and that restraint of unlawful picketing is within the general equity jurisdiction of a state court unrestricted by either the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended, (43 PS §206a et seq.),[9] or by the Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168, as amended, (43 PS §211.1 et seq.).[10] Otherwise, such conduct on the part of a Union would be entirely ungoverned because picketing for an unlawful purpose is not an unfair labor practice under the Pennsylvania Labor Relations Act and the State Labor Relations Board has no power to take action to enjoin it: Pennsylvania Labor Relations Board v. Chester and Delaware Counties Bartenders, Hotel & Restaurant Employes Union, et al., 361 Pa. 246, (1949), and, as we have heretofore found, neither has the NLRB jurisdiction over the instant controversy.

The Union does not take issue with the Wilbank and Phillips cases. It contends, however, that they are not here controlling because plaintiffs therein were not engaged in interstate commerce and, further, because the peaceful picketing in the case at bar was solely for

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[9] Section 4 of the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended by the Act of June 9, 1939, P. L. 302 (43 PS 206d), provides that the prohibition against injunction shall not apply in any case * * *

"(b) Where a majority of the employes have not joined a labor organization, or where two or more labor organizations are competing for membership of the employes, and any labor organization or any of its officers, agents, representatives, employes, or members engages in a course of conduct intended or calculated to coerce an employer to compel or require his employes to prefer or become members of or otherwise join any labor organization."

organizational and advertising purposes and the Union did not at any time, as in the two aforesaid cases, picket an employer's place of business for the purpose of requiring him to force his employees to join a particular union or, if they refused so to do, to discharge them and employ others who were members thereof. We cannot accept this contention. Under the facts as we have found them, the picketing was, in our opinion, cleverly designed by the Union to force an employer to commit an unlawful act, and at the same time attempt to by-pass or avoid the legal pitfalls into which other labor organizations had theretofore fallen.

Central's operations at its Reading pick-up and delivery terminal were peculiarly vulnerable to picketing because the great bulk of the business there transacted by it was with unionized trucking concerns.

The Union laid its plans accordingly. It did not personally contact either Central or its twenty unorganized employees. It did not ask Central to arrange a meeting with these employees, a request which Central at all times would have granted. It did not picket and in fact disclaimed any desire to picket Central's main office to which all the employees came at least weekly. On the contrary, the Union sent letters to

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[1] Section 5 of the Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168, (43 PS 211.5), provides:

"Employes shall have the right to self-organization, to form, join or assist labor organizations, * * *."

Section 6 of the said Act, as amended by the Act of July 7, 1947, P. L. 1445, (43 PS Pocket Parts 211.6) provides:

"(1) It shall be an unfair labor practice for an employer—

"(a) To interfere with, restrain or coerce employes in the exercise of the rights guaranteed in this act.

* * * *

"(c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization: * * *."

neighboring affiliates advising them that there was no strike at Central but that, in connection with an organizational campaign, it intended to picket Central's Reading terminal and, further, therein requesting these affiliates to act so that no one might misconstrue the Union's objects or purposes. Thereupon, the Union placed two pickets at the entrance to the terminal carrying signs bearing the legend "Local 776 Teamsters Union (A. F. of L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions." Within two days thereafter and until the picketing was temporarily enjoined by this Court, Central's business at its Reading terminal fell off 95% with a resulting loss to it of $400.00 to $500.00 per day. The effect of this picketing fully justifies the observations made by the United States Supreme Court in the Hughes case, supra, that industrial picketing is more than free speech and that the loyalties and responses exacted by picket lines are unlike those flowing from the printed word and produce consequences different from other modes of communication.

The right to carry on business be it called liberty or property has value and to interfere with this right without just cause is unlawful: Dorchy v. Kansas, 272 U. S. 306, 47 S. Ct. 86, (1926). A state is not required to tolerate in all places and under all circumstances even peaceful picketing by an individual if the purpose which it seeks to effectuate gives ground for its disallowance: Hughes case, supra. The business agents of the Union were fully aware of the financial burdens being placed upon Central as a result of the picketing here in question, and were fully cognizant of the consequences attendant thereto. We cannot conceive that, under the cloak of free speech, any labor organization has the right to engage in conduct designed to disrupt

and destroy an employer's business, in an effort to compel him to abide by union policy rather than by the declared policy of the state and federal governments. Looking through form to substance, that is precisely what the Union did.

We believe, upon application of the law to the facts as we have found them, that the acts and conduct of the Union were an abuse of the right to picket rather than a means of peaceful and truthful publicity; that the Union, in picketing Central's Reading terminal, deliberately stepped over the line from persuasion to coercion in an attempt to compel Central to force its unorganized employees to join the Union; and that, therefore, the picketing was for an unlawful purpose and subject to restraint by this Court. It must be understood, however, that our conclusions are predicated primarily upon the finding that Central's business at its terminal—almost exclusively carried on with unionized trucking firms—was completely at the mercy of a picket. Therefore, our conclusions are not to be construed as otherwise limiting in any respect the right of a labor union, under other conditions and circumstances, to peacefully picket an employer's place of business for purely organizational purposes. The peculiar facts underlying each controversy must control decision.

In view of the foregoing, we state the following

Conclusions of Law

1. Peaceful picketing, although a right which generally speaking is constitutionally guaranteed as one of free speech, is not necessarily and under all circumstances lawful.

2. Free speech is not involved where the labor ob-

jective is illegal and under such circumstances picketing may properly be enjoined.

3. Coercion is not necessarily limited to threats of violence to a person or his property but may be quite as effective by causing him substantial business losses.

4. The picketing here in question deliberately stepped over the line from legitimate persuasion for organizational purposes to coercion exerted on plaintiffs to force them to compel their employes to join the defendant Union or otherwise sustain substantial business losses.

5. The picketing by defendant Union of plaintiffs' Reading pick-up and delivery terminal was for an unlawful purpose.

6. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal is not an unwarranted encroachment upon rights protected from state abridgement by the Fourteenth Amendment to the Constitution of the United States.

7. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal does not abridge, deny, or contravene any rights guaranteed to them under the Constitution of the Commonwealth of Pennsylvania.

8. Although certain of the plaintiffs' activities are in interstate commerce the National Labor Relations Board does not have jurisdiction over the activities of the defendants here in question.

9. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal at 9th and Market Streets, Harris-

burg, Pa., is within the general equity jurisdiction of this Court unrestricted by either the Labor Anti-Injunction Act of 1937, P. L. 1198, as amended in 1939, P. L. 302, or by the Pennsylvania Labor Relations Act of 1937, P. L. 1168, as amended in 1947, P. L. 1445.

Decree Nisi

AND NOW, September 4, 1951, upon consideration of the foregoing case, it is ordered, adjudged and decreed that defendants, Teamsters Chauffeurs and Helpers Local Union No. 776 (AFL), Ed Long, President, Allen Kline, business manager, its other officers and agents, and each of them, be and they are enjoined and restrained from picketing or patrolling, either with or without the use of signs, plaintiffs' Reading pick-up and delivery terminal located in the vicinity of 9th and Market Streets, Harrisburg, Pa. and all entrances leading thereto. The Prothonotary is directed to enter this decree nisi and forthwith give notice thereof to all parties of record or their counsel. If no exceptions are filed thereto within ten (10) days after the entry of this decree, a final decree will be entered; costs to be paid by defendants.

/s/ PAUL G. SMITH,
Chancellor.

Defendants' Exceptions to Adjudication and Decree Nisi

XII

DEFENDANTS' EXCEPTIONS TO ADJUDICATION INCLUDING FINDING OF FACT, DISCUSSION, CONCLUSIONS OF LAW AND DECREEE NISI

And Now, September 14, 1951, the Defendants except to the adjudication, findings of fact, discussion, conclusions of law, and decree nisi entered in the above-stated case on September 4, 1941, by the Honorable Paul G. Smith, Chancellor, as follows:

1. The Defendants except to the Courts' finding of fact numbered 9, which is as follows:

> "9. During the time Central has been in business it never has had any controversy or labor dispute with its employees or any of them with respect to wages, hours or working conditions."

2. The Defendants except to the Courts' finding of fact numbered 11, which is as follows:

> "11. During the many years Central has been in business it has never in any way, directly or indirectly, put pressure on its employees to join or refrain from joining a labor organization or to engage or refrain from engaging in concerted activities for the purpose of collective bargaining."

3. The Defendants except to the Court's finding of fact numbered 12, which is as follows:

> "12. Central has never objected to and pres-

ently has no objections to any of its employees joining the Union."

4. The defendants except to the Courts' finding of fact, numbered 14, which is as follows:

"14. The wages paid by Central to its employees are above the union scale for this area."

5. The Defendants except to the Courts' finding of fact numbered 18, which is as follows:

"18. At the time the Union placed the pickets there was no labor dispute between Central and its employees, none of whom were on strike."

6. The Defendants except to the Courts' finding of fact numbered 24, which is as follows:

"24. From the beginning of the picketing by the Union on June 7, 1949, or from the day thereafter, to the time the Court preliminarily enjoined the same on June 17, 1949, Central's Reading pick-up and delivery terminal did practically no business with unionized establishments such as the Reading Transportation Company, Shirk's Motor Express, West Shore Motor Express, Lancaster Transportation Company, Hartman's Transportation Company, Horn's Motor Express, Daily Motor Express and other interchange carriers, the truck operators of which refused to cross the picket line."

7. The Defendants except to the Courts' finding of fact numbered 25, which is as follows:

"25. During the period of the picketing the business of Central at its Reading pick-up and delivery terminal fell off 95%, or approximately

250,000 lbs. of freight daily, with a resulting loss to it of between $400.00 and $500.00 per day."

8. The Defendants except to the Courts' finding of fact numbered 34, which is as follows:

"34. Central's operations at its Reading pick-up and delivery terminal were unique in that the great bulk of the business there transacted by it was with unionized trucking concerns."

9. The Defendants except to the Courts' finding of fact numbered 35, which is as follows:

"35. The Union knew that, if the employees of unionized trucking concerns doing business at said terminal refused to pass a picket placed at the entrance thereto, Central would sustain large financial losses and its business thereat would be ruined with ultimate loss of its terminal rights."

10. The Defendants except to the Courts' finding of fact numbered 36 which is as follows:

"36. If the picketing had not been enjoined, Central would have lost not only its contract with the Reading Transportation Company but also its terminal facilities with the Reading Railroad Company."

11. The Defendants except to the Courts' finding of fact, numbered 37, which is as follows:

"37. Central's business is highly competitive and, by reason of the picketing, Central lost not only the good will of certain of its customers built up during many years but also business which has gone to its competitors who operate in the same locality."

Defendants' Exceptions to Adjudication and Decree Nisi

12. The Defendants except to the Courts' finding of fact numbered 38, which is as follows:

> "38. The officers of the Union knew that each day the picketing herein question continued Central would sustain substantial business losses."

13. The Defendants except to the Courts' finding of fact numbered 39, which is as follows:

> "39. The acts and conduct of the Union were an abuse of the right to picket rather than a means of peaceful and truthful publicity."

14. The Defendants except to the Courts' finding of fact, numbered 40, which is as follows:

> "40. The Union, its officers and agents, carried the picketing here in question beyond the field of persuasion for organizational purposes into the field of intimidation or business compulsion deliberately designed to coerce Central, by causing it substantial business losses, to compel or require its employees to become members of the Union."

15. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered 7 which is as follows:

> "7. The Union placed the pickets at Central's place of business at the Rear of the Reading Railroad at 9th and Market Streets because that is the place where all the drivers go; it is listed in the telephone directory as the company's terminal and the Union did not want to create the impression that it was including the organization of office workers. Furthermore, said terminal is a place of employment of Central."

Defendants' Exceptions to Adjudication and Decree Nisi

16. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered 13, which is as follows:

"13. Following the commencement of the picketing on June 7, 1948, some truck drivers of other trucking companies continued to deliver and pick up freight at Central's terminal and others refrained from passing the picket. Reading Transportation Company delivered two truckloads to Central on June 8, and then advised him that no more shipments would come in thereafter; one driver for Shirk's Motor Express made deliveries thereafter; Lancaster Transportation Company came in regularly thereafter; Eastern Motor Express made a few deliveries during the picketing, Hartman's Transportation Co., and Daily Motor Express each made a delivery on June 8."

17. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered 14, which is as follows:

"14. The companies and drivers of freight trucks that refrained from picking up and delivering freight at Central's terminal after the picketing commenced on June 7, were prompted so to do for various reasons, as follows: R. G. Mowery of West Shore Express told the drivers, who were Union members, that it was up to them, and they decided not to go through; Bowman, terminal manager of Hartman's inquired of Kline whether or not their drivers went in, and Kline advised Bowman it was up to him whether or not men went in, but that he expected him to cooperate; Boyer, a driver for Reading Transportation Co., saw a

picket and didn't deliver; Gardner, stayed out because his company, Shirk's Motor Express told him to stay out; Heisler, a driver for Shirk's and Snyder a driver for Daily Motor Express, acting on their own initiative and will didn't go in because they wouldn't pass a picket line; Gitt, another driver for Daily Motor Express didn't go in because "the other guy didn't go in . . ."

18. The Defendants except to the Courts' refusal of part of the Defendants' request for finding of fact numbered 15, which is as follows:

"15. The Union did not instruct other unionized trucking companies to refrain from delivering or picking up at Central's terminal."

19. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered 16, which is as follows:

"16. The sole purpose of the picketing is to advertise to the employees of Central to join the Union for union wages, hours, and working conditions."

20. The Defendants' except to the Courts' refusal of the Defendants' request for finding of fact numbered 20, which is as follows:

"20. The Union employed the picketing method to advertise its organizational campaign among the employees of Central because Kline attempted to talk to Garner in 1939 about organizing said employees and Garner ordered him off Central's premises; Kline contacted employees of Central at other trucking terminals and on the street, and

they were afraid to talk to him; the Union had neither funds or time to contact the men at their homes; and, the Union felt it would be embarrassing to the employes to conduct a home-to-home solicitation."

21. The Defendants except to the Courts' refusal of the Defendants' request for finding of fact numbered 22, which is as follows:

"2. On June 10, 1941, Central filed a charge against the Union, alleging, as unfair labor practices, substantially the same matters as are set forth in the Bill of Complaint in these proceedings, with the Pennsylvania State Labor Relations Board, wherein it sought the same remedy as it seeks in these proceedings."

22. The Defendants except to any and all parts or portions of the Adjudication of the Court insofar as it applies or depends upon the principles enunciated in the case of International Union, United Automobile Workers v. Wisconsin Board, 336 U.S. 245, 69 S. Ct. 516, (1949) which Defendants assert are not applicable to the instant case.

23. The Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:

". . . In the case at bar, however, we have no conflict between the Taft-Hartley Act, and any act of this state . . ."

24. The Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion as follows:

". . . The sole question here is whether, by reason of the provisions of the Taft-Hartley Act, this Court in the exercise of its general equity jurisdiction no longer has the power to restrain, at the instance of a private individual and under the facts as we have found them, peaceful picketing, allegedly for organizational purposes or whether such individual must seek such relief through the NLRB. Neither our Supreme Court, nor the United States Supreme Court appear to have directly passed upon this question. And, until one of these Courts does, we are constrained, for the reasons hereinafter set forth, to hold that this Court has jurisdiction."

25. The Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:

". . . since the Union's organizational picketing was peaceful . . . such picketing was not an unfair labor practice within the meaning of section 8 (b) (1) (A) . . . and since the Union at no time . . . made demands on Central to recognize it for the purpose of collective bargaining . . . the Union was not guilty of any unfair labor practice within the meaning of section 8 (b) (1) (B). Neither can we find that the Union was guilty of any unfair labor practices as specified in sections 8 (b) (4) (A) or (B)."

26. Defendants except to the Adjudication of the Court insofar as it fails to give any consideration, and the Discussion omits any reference to the proposition that the Union, if it picketed for the purposes as set

forth in the findings of fact, and Discussion, engaged in unfair labor practices prescribed by section 8 (b) (2) of the Labor-Management Relations Act of 1947, (29 U.S.C.A. Pocket Parts Sec. 158).

27. Defendants except to the Adjudication of the Court insofar as it fails to hold that the court was without jurisdiction to enjoin Defendants in this case because they were engaged in activities and were exercising rights protected and guaranteed by Section 7 of the Labor-Management Relations Act of 1947, supra.

28. Defendants except to the Adjudication of the Court, insofar as it depends upon the proposition set forth in the Discussion as follows:

> "Upon application of the principles laid down in the Briggs-Stratton case, we are of the opinion that the factual situation now before us falls within the area designedly left open by Section 7 of the Taft-Hartley Act to state control."

29. Defendants except to the Adjudication of the Court insofar as it depends upon the decision of the Supreme Court of Missouri in the case of Kincaid-Webber Motor Company v. Quinn, et. al., for authority and as precedent.

30. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion as follows:

> "In the instant case there is no labor dispute between Central and its employees, none of whom are on strike. Neither Central nor the Union in any way attempted to restrain or coerce these employees in their right to self-organization guaranteed by Section 7 . . ."

Defendants' Exceptions to Adjudication and Decree Nisi

31. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition that the cases of:

Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees of America, Dis. 998, et. al. v. Wisconsin Employment Relations Board, 340 U.S. 383, 71 S. Ct. 359 (1951).

International Union of United Auto Workers v. O'Brien, 339 U.S. 454, 70 S. Ct. 781 (1950)

Gerry of California v. Superior Court, 194 P 2d 689 (1948)

Ex Parte DeSilva, 199 P2d 6. (1948)

Pocahontas Terminal Corporation v. Portland Building & Construction Trade Council et. al., 93 F. Supp. 217

Norris Grain Co. v. Nordaas, 46 N.W. 2d, 94 (1950)

Goodwins, Inc., v. Hagedorn, et. al. (N. Y. App. Div.) 19 C.C.H. Labor Cases, par 66, 272; 20 C.C.H. Labor cases, par. 66, 409.

are not applicable and controlling in the instant case.

32. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the discussion, as follows:

". . . These cases (Hughes et. al. v. Superior Court of California, 339, U. S. 460, 70 S Ct., 718; International Brotherhood of Teamsters et. al. v. Hanke, et. al., 339, U. S. 470, 70 S. Ct. 773; Building Service Employees, et. al., v. Gazzam, 339 U. S. 532, 70 S. Ct. 784; Wilbank et. ux. v. Chester and

Delaware Counties Bartenders, etc., et. al. 360 Pa. 48, cert. den. 336 U. S. 945, 69 S. Ct. 812; Phillips et. al. v. United Brotherhood etc., et. al., 362 Pa. 78) are, further, authority for the proposition that coercion is not necessarily limited to threats of violence to a person but may be quite as effective by causing him substantial business losses, and that restraint of unlawful picketing is within the general equity jurisdiction of a state court unrestricted by the Pennsylvania Labor Anti-Injunction Act of June 2, 1937, P. L. 1198, as amended, or by the Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168, as amended . . . Otherwise, such conduct on the part of a Union would be entirely ungoverned because picketing for an unlawful purpose is not an unfair labor practice under the Pennsylvania Labor Relations Act . . . and, as we have heretofore found, neither has the NLRB jurisdiction over the instant controversy."

33. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:

". . . Under the facts as we have found them, the picketing was, in our opinion, cleverly designed by the Union to force an employer to commit an unlawful act, and at the same time, attempt to by-pass or avoid the legal pitfalls into which other labor organizations had heretofore fallen."

34. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:

". . . We cannot conceive that, under the cloak

of free speech, any labor organization has the right to engage in conduct designed to disrupt and destroy an employer's business, in an effort to compel him to abide by union policy rather than by the declared policy of the state and federal governments. Looking through form to substance, that is precisely what the Union did."

35. Defendants except to the Adjudication of the Court insofar as it depends upon the proposition set forth in the Discussion, as follows:

"We believe, upon application of the law to the facts as we have found them, that the acts and conduct of the Union were an abuse of the right to picket rather than a means of peaceful and truthful publicity; that the Union, in picketing Central's Reading terminal, deliberately stepped over the line from persuasion to coercion in an attempt to compel Central to force its unorganized employees to join the Union; and that, therefore, the picketing was for an unlawful purpose, and subject to restraint by this Court . . ."

36. The Defendants except to the Courts conclusion of law numbered 3, which is as follows:

"3. Coercion is not necessarily limited to threats of violence to a person or his property but may be quite as effective by causing him substantial business losses."

37. The Defendants except to the Courts conclusion of law numbered 4, which is as follows:

"4. The picketing here in question deliberately stepped over the line from legitimate persuasion

for organizational purposes to coercion exerted on plaintiffs to force them to compel their employes to join the defendant Union or otherwise sustain substantial business losses."

38. The Defendants except to the Courts conclusion of law numbered 5, which is as follows:

"5. The picketing by defendant Union of plaintiffs' Reading pick-up and delivery terminal was for an unlawful purpose."

39. The Defendants except to the Courts conclusion of law numbered 6, which is as follows:

6. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal is not an unwarranted encroachment upon rights protected from state abridgment by the Fourteenth Amendment to the Constitution of the United States."

40. The Defendants except to the Courts conclusion of law numbered 7, which is as follows:

"7. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal does not abridge, deny, or contravene any rights guaranteed to them under the Constitution of the Commonwealth of Pennsylvania."

41. The Defendants except to the Courts' conclusion of law numbered 8, which is as follows:

"8. Although certain of the plaintiffs' activities are in interstate commerce, the National Labor Relations Board does not have jurisdiction over the activities of the defendants herein question."

Defendants' Exceptions to Adjudication and Decree Nisi

42. The Defendants except to the Courts' conclusion of law numbered 9, which is as follows:

> "9. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal at 9th and Market Streets, Harrisburg, Pa., is within the general equity jurisdiction of this Court unrestricted by either the Labor Anti-Injunction Act of 1937, P. L. 1198, as amended in 1939, P. L. 302, or by the Pennsylvania Labor Relations Act of 1937, P. L. 1168, as amended in 1947, P. L. 1445."

43. The Defendants except to the Courts' refusal to make a conclusion of law to the effect that the Congress of the United States had pre-empted jurisdiction over the subject-matter of these proceedings by the enactment of the National Labor Relations Act of 1935 (Wagner Act) as amended by the Labor-Management Relations Act of 1947 (Taft-Hartley Act), and that the National Labor Relations Board has exclusive primary jurisdiction over the subject-matter herein.

44. The Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 1, as follows:

> "1. This case involves or grows out of a labor dispute within the purview of Section 3 (a) of the Pennsylvania Labor Anti-Injunction Act of 1937, P. L. 1198."

45. The Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 2, as follows:

> "2. A labor dispute within the meaning of the

term as provided in Section 3 (c) of the Pennsylvania Labor Anti-Injunction Act of 1937, P. L. 1198, exists between the parties to this action."

46. The Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 3, as follows:

"3. The defendants in this action are persons participating or interested in a labor dispute within the scope of Section 3 (b) of the Pennsylvania Labor Anti-Injunction Act of 1937, P. L. 1198."

47. The Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 4, as follows:

"4. The exceptions to the Pennsylvania Labor Anti-Injunction Act of 1937, P. L. 1198, which are embodied in the amendments to Section 4 thereof, enacted June 9, 1939, P. L. 302, are not applicable to this case.

48. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 5, as follows:

"5. The Plaintiff has failed to allege and prove the statutory prerequisites for the relief prayed for which are set forth in Section 9 and 11 of the Pennsylvania Labor Anti-Injunction Acts of 1937 P. L. 1198."

49. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 6, as follows:

"6. The court is without power to grant the

relief prayed for because such would contravene Section 6 of the Pennsylvania Labor Anti-Injunction Act of 1937 P. L. 1198."

50. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 7, as follows:

"7. The plaintiff's business involves and it is engaged in interstate commerce thereby subjecting the controversy to the exclusive jurisdiction of the National Labor Relations Board pursuant to the provisions of the National Labor Relations Act of 1947."

51. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 8, as follows:

"8. A court order granting the relief prayed for by Plaintiff in these proceedings impairs the rights to self-organization guaranteed by Section 7 of the National Labor Relations Act of 1947."

52. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 9, as follows:

"9. The rights guaranteed by Section 7 of the National Labor Relations Act of 1947 are paramount over the right of the Plaintiff to control the use of its property, where the two rights conflict."

53. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 11, as follows:

"11. Defendants' right to picket under the cir-

cumstances of this case is included in the right of freedom of speech guaranteed by the First Amendment to the United States Constitution and the 7th Section of Article 1 of the Constitution of Pennsylvania."

54. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 12, as follows:

"12. Defendants' right to picket under the circumstances of this case is included in the right to peaceably assemble guaranteed by the First Amendment to the United States Constitution and the 20th Section of Article 1 of the Constitution of Pennsylvania."

55. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 13, as follows:

"13. Defendants' right to picket under the circumstances of this case is guaranteed by the privileges and immunities provision of the Fourteenth Amendment to the United States Constitution."

56. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 14, as follows:

"14. Defendants' right to picket under the circumstances in this case is a fundamental right and liberty secured from abridgment by the state by the Fourteenth Amendment to the United States Constitution."

57. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 15, as follows:

Defendants' Exceptions to Adjudication and Decree Nisi

"15. Defendants' right to picket under the circumstances in this case is secured to them by the provisions of the Fourteenth Amendment to the United States Constitution assuring defendants the equal protection of the laws."

58. Defendants except to the Courts' refusal of the Defendants request for conclusion of law numbered 16, as follows:

"16. Defendants' right to picket under the circumstances in this case is secured to them by the inherent and indefeasible rights guaranteed by the 1st Section of Article 1 of the Constitution of Pennsylvania."

59. The Defendants except to the Decree Nisi, entered by the Court in these proceedings, and which is as follows:

"Decree Nisi

"AND NOW, September 4, 1951, upon consideration of the foregoing case, it is ordered, adjudged and decreed that defendants, Teamsters Chauffeurs and Helpers Local Union No. 776 (AFL), Ed Long, President, Allen Kline, Business Manager, its other officers and agents, and each of them, be and they are enjoined and restrained from picketing or patrolling, either with or without the use of signs, plaintiffs' Reading pick-up and delivery terminal located in the vicinity of 9th and Market Streets, Harrisburg, Pa., and all entrances leading thereto. The Prothonotary is directed to enter this decree nisi and forthwith give notice thereof to all parties of record or their counsel. If no exceptions are filed thereto within ten (10) days after the entry

of this decree, a final decree will be entered; costs to be paid by defendants."

DOUGLASS, HANDLER, ROSENBERG & WARE
/s/ By SIDNEY G. HANDLER,
Attorney for Defendants.

XIII

OPINION AND FINAL DECREE

OPINION

BY THE COURT:

The defendants (hereinafter called the "Union") filed 59 exceptions to the adjudication, findings of fact, discussion, conclusions of law and decree nisi entered September 4, 1951 by the Chancellor in the above captioned case.

Under the decree nisi the Union was enjoined and restrained from picketing a pick-up and delivery terminal operated by plaintiffs at the rear of the Reading Railroad Freight Station at 9th and Market Streets, Harrisburg, Pa.

The sole issues raised by plaintiffs' bill and the Union's answer and motion to dismiss filed thereto were whether the picketing by the Union, although at all times peaceful and allegedly for organizational purposes, was a lawful exercise of the constitutional guaranty of free speech, or whether said picketing was in furtheranee of an unlawful purpose and, therefore, subject to re-

straint by this Court under its general equity jurisdiction unrestricted by the Pennsylvania Labor Anti-Injunction Act of 1937, as amended.

After a full hearing duly held on these issues, a preliminary injunction was issued, as prayed for by plaintiffs, restraining the aforesaid picketing.

Thereafter, the Union, without amending its answer, for the first time contended that Congress had vested in the National Labor Relations Board exclusive jurisdiction to investigate, approve or take action to forbid the conduct of the Union here in question, and that, therefore, this Court had no jurisdiction to act in the matter and was required to dissolve the preliminary injunction then outstanding and dismiss the bill.

Further hearings were held and, after the close of the trial and the filing of requests by both parties for findings of fact and conclusions of law, the Chancellor made his adjudication wherein, inter alia, he sustained the jurisdiction of this Court and entered the decree nisi hereinbefore referred to.

Certain of the controlling facts as found by the Chancellor are as follows:

Plaintiffs are engaged in the trucking and storage business with principal office at 11th and State Streets, Harrisburg, Pa. Since 1931 they have also operated a local freight pick-up and delivery service for the Reading Railroad Company, for its trucking division, the Reading Transportation Company, and for approximately fifteen other trucking concerns. This business is conducted by them from terminal and platform facilities located at the rear of the Reading Freight Station, 9th and Market Streets, Harrisburg, Pa. Therein plaintiffs employ twenty-four persons as truckers, helpers

and platform men, four of whom are members of the defendant Union.

On June 7, 1949, without any notice whatsoever to the plaintiffs or their employees, rotating pickets, two at a time, none of whom were employees of plaintiffs, were placed by the defendant Union, one in front of plaintiffs' Reading loading platform and the other at the entrance thereto, carrying signs bearing the legend "Local 776 Teamsters Union (A. F. of L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions." This picketing, at all times conducted in an orderly manner, continued until preliminarily enjoined on June 17, 1949. Prior to and during the time of the picketing, there was no labor dispute between plaintiffs and their employees, none of whom were out on strike.

Plaintiffs' operations at their picke-up and delivery terminal were unique in that the great bulk of the business there transacted by them was, as the defendant Union well knew, with unionized trucking concerns. During the period of the picketing, plaintiffs' business at this terminal fell off 95%, or approximately 250,000 lbs. of freight daily, with a resulting loss to them of $400.00 to $500.00 per day, and this because practically all the teamster members of the defendant Union and of the neighboring union affiliates refused to drive their trucks past the pickets or to load or unload freight at the terminal. The officers of the defendant Union knew that each day the pickets were stationed at their terminal plaintiffs would sustain substantial business losses, and also that, if the picketing continued for any length of time, plaintiffs would lose not only their contract with the Reading Transportation Company but also their terminal facilities with the Reading Railroad Company.

In view of the foregoing and other findings not here repeated, the Chancellor, further, found that the acts and conduct of the Union was an abuse of the right to picket rather than a means of peaceful and truthful publicity and that the Union, its officers and agents, carried the picketing here in question beyond the field of persuasion for organizational purposes into the field of intimidation or business compulsion deliberately designed to coerce plaintiffs, by causing them substantial business losses, to compel or require their employees to become members of the Union.

Thereupon, the Chancellor in his adjudication, made the following conclusions of law:

"1. Peaceful picketing, although a right which generally speaking is constitutionally guaranteed as one of free speech, is not necessarily and under all circumstances lawful.

"2. Free speech is not involved where the labor objective is illegal and under such circumstances picketing may properly be enjoined.

"3. Coercion is not necessarily limited to threats of violence to a person or his property but may be quite as effective by causing him substantial business losses.

"4. The picketing here in question deliberately stepped over the line from legitimate persuasion for organizational purposes to coercion exerted on plaintiffs to force them to compel their employes to join the defendant Union or otherwise sustain substantial business losses.

"5. The picketing by defendant Union of plaintiffs' Reading pick-up and delivery terminal was for an unlawful purpose.

"6. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal is not an unwarranted encroachment upon rights protected from state abridgement by the Fourteenth Amendment to the Constitution of the United States.

"7. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal does not abridge, deny, or contravene any rights guaranteed to them under the Constitution of the Commonwealth of Pennsylvania.

"8. Although certain of the plaintiffs' activities are in interstate commerce the National Labor Relations Board does not have jurisdiction over the activities of the defendants here in question.

"9. The restraint of picketing by defendant Union, its officers and agents, of plaintiffs' Reading pick-up and delivery terminal at 9th and Market Streets, Harrisburg, Pa., is within the general equity jurisdiction of this Court unrestricted by either the Labor Anti-Injunction Act of 1937, P. L. 1198, as amended in 1939, P. L. 302, or by the Pennsylvania Labor Relations Act of 1937, P. L. 1168, as amended in 1947, P. L. 1445."

and entered the decree nisi restraining the picketing in question.

Exceptions Nos. 1 to 14, inclusive, filed by the Union, question certain findings of fact made by the Chancellor. None of these exceptions raise any matters not theretofore considered in the adjudication and no further consideration thereof is here required. Exceptions Nos. 15 to 21, inclusive, complain that the Chan-

cellor did not make certain findings of fact in accordance with the Union's request. None of these exceptions aver, however, that the Chancellor failed to make substantial disposition thereof. Therefore, under Equity Rule 71, we are not here required to specifically answer them; Beck v. O'Loughlin et al., 87 Pittsburgh Legal Journal 150 (1939); Strosser v. Strosser, 49 Lanc. L. Rev. 143 (1944); Bushong et al. v. Ashton (No. 2), 51 Lanc. L. Rev. 161 (1948); Bechtold et al. v. Coleman Realty Company et al., 52 Lanc. L. Rev. 141 (1950); Dell et ux. v. Berks County Trust Company et al., 75 D. & C. 371 (1950). Exceptions Nos. 22 to 35, exclusive, question certain parts of the adjudication set forth in the Chancellor's discussion and in the failure therein to adopt the Union's theory of the case. However, since the function of the discussion in an equity adjudication is simply to indicate, for the assistance of the reviewing court, the reasons on which the decision is based, no part thereof can be made the subject of exceptions: 8 Pa. Standard Practice, Section 367, p. 254; Campbell's Loose Leaf Annotated Current Service, Equity Rule 69, Annotation p. 1; J. P. Burns et al. v. Equipment Finance Inc., 57 Dauphin 319 (1946); Bushong et al. v. Ashton (No. 2), supra; Winger et al. v. Aires et al., 52 Lanc. L. Rev. 453 (1951). Exceptions No. 36 to 42, inclusive, question all but the first two conclusions of law made by the Chancellor. Exceptions Nos. 43 to 58, inclusive, question the action of the Chancellor in refusing to make certain conclusions of law as requested by the Union. Exception No. 59 is to the decree nisi entered by the Chancellor.

On January 7, 1952, and subsequent to the filing of the Chancellor's adjudication, our State Supreme Court handed down an opinion in the case of Wortex Mills,

Inc. v. Textile Workers Union of America, C. I. O., 369 Pa. 359, 85 A. 2d 851, affirming the action of the Court of Common Pleas No. 5 of Philadelphia County in restraining certain picketing. Therein, Mr. Justice Bell, speaking for the Court, in a full and most comprehensive opinion, considered all of the issues involved in the case at bar and in conclusion said, 369 Pa. at p. 369:

> "Because several important Acts of Congress and State Statutes dealing with industrial relations and the rights of employees and employers are of such recent origin, the field of industrial relationship is not yet well marked nor its boundaries clearly defined. Nevertheless, the decisions up to this time may be thus summarized: *A State Court may enjoin unlawful picketing or picketing which is conducted in an unlawful manner or for an unlawful purpose. Picketing, if peaceful, orderly and for a legitimate or lawful purpose, is legal and within the protection of the Constitution. However a State is not required to tolerate in all places and in all circumstances even peaceful picketing by an individual; it is well established that the method or conduct or purpose or objective of the picketing may make even peaceful picketing illegal.*"

After argument before the Court en banc, and upon application of the principles enunciated in the Wortex Mills case, we are of the opinion that none of the exceptions filed by the defendants now before us have any merit; that the findings of fact made by the Chancellor are supported by the record before us; that his conclusions of law are proper; and that all of the exceptions filed by the defendants to the adjudication should be dismissed and the decree nisi affirmed.

Opinion and Final Decree

FINAL DECREE

AND NOW, March 5, 1952, the exceptions of the defendants, Teamsters Chauffeurs and Helpers Local Union No. 776 (AFL), Ed Long, President, Allen Kline, Business Manager, its other officers and agents, are severally dismissed. Judgment shall be entered in accordance with the decree nisi filed September 4, 1951.

/s/ PAUL G. RITTER,
P. J.

[fol. 229] In the Supreme Court of Pennsylvania, Middle District, May Term, 1952

No. 53

Docket Entries

Joseph Gardner and A. Joseph Gardner, trading as Central Storage & Transfer Company

vs.

Teamsters, Chauffeurs & Helpers Local Union No. 776 (AFL), Ed Long, President, Allen Kline, Business Manager, its other Officers and Agents, Appellants

Appeal from decree at No. 1884 Equity Docket

Injunction

David S. Kohn, McNees, Wallace & Nurick, James H. Booser.

Douglass, Handler, Rosenberg & Ware, Sidney G. Handler.

Appeal from Court of Common Pleas of the County of Dauphin.

March 19, 1952: Appeal filed. Eo die certiorari exit. Returnable 21st Monday of the year, 1952.

March 27, 1952: Notice of Appeal etc. filed.

May 6, 1952: Appearance entered for Appellee. McNees, Wallace & Nurick; James H. Booser.

May 22, 1952: Record received and filed.

May 28, 1952: Argued.

"Feb. 13, 1953: The decree is reversed at cost of appellees, and the bill is dismissed for want of jurisdiction. Horace Stern, C. J."

Dissenting opinion filed by Bell, J.

Feb. 20, 1953: Petition for Reargument filed.

"March 24, 1953: Petition denied. Per curiam."

March 27, 1953: Remittitur exit, and with record sent to the Prothonotary of Dauphin County.

March 31, 1953: Praecipe as to what shall constitute record to the Supreme Court of the United States filed.

April 1, 1953: Acknowledgment of remittitur and record received and filed.

[fol. 230] IN THE SUPREME COURT OF PENNSYLVANIA

(Middle District)

No. 26

[Title omitted]

OPINION OF THE COURT—Filed February 13, 1953

HORACE STERN, C. J.

Plaintiffs, Joseph Garner and A. Joseph Garner, trading as Central Storage and Transfer Company, are engaged in the trucking and storage business in Harrisburg. Their principal office there was at 11th and State Streets, but they maintained terminal and platform facilities at the rear of the Reading Railroad Freight Station at 9th and Market Streets, where they operated a local freight pick-up and delivery service for the Reading Railroad Company and its trucking division, the Reading Transportation Company, (with both of which it had contracts), as well as with some fifteen other trucking firms. Some of the freight handled by them is shipped on the Reading Railroad from points outside the State to consignees in Harrisburg. They employ 24 persons as truckers, helpers and platform men; only 4 of these are members of Teamsters, Chauffeurs and Helpers, Local Union No. 776 (A. F. L.), an unincorporated labor organization the members of which are engaged as truck drivers and helpers in the same industry in which plaintiffs are also engaged. Plaintiffs have never objected, and do not presently object, to any of their employees joining the Union.

On June 7, 1949, rotating pickets, two at a time, none of whom was an employee of plaintiffs, were placed by the [fol. 231] Union, one in front of, and the other at the entrance to, plaintiffs' Reading loading platform; they carried signs bearing the following legend: "Local 776 Teamsters Union (A. F. of L.) want Employees of Central Storage and Transfer Co. to join them to gain union wages, hours and working conditions." This picketing was conducted at all times in an orderly and peaceful manner. Neither then nor at any other time has there been any

controversy or labor dispute between plaintiffs and their employees, none of whom were on strike. While the picketing continued union truck drivers and helpers employed by the Reading Transportation Company and other interchange carriers refused to cross the picket line; as the bulk of plaintiffs' operations was with unionized trucking concerns the consequence was that their local business fell off 95%, causing a loss to them of between $400 and $500 per day, in addition to which they stood to have their contract with the Reading Transportation Company cancelled and their terminal facilities with the Reading Railroad Company vacated.

Plaintiffs, on June 9, 1949, brought a bill in equity against the Union to enjoin the picketing, and, on June 17, 1949, the court, after hearing testimony offered by both parties, decreed that a preliminary injunction should issue as prayed for. Subsequently additional testimony was taken on final hearing, and, on September 4, 1951, the court entered a decree nisi enjoining and restraining defendants from picketing plaintiffs' Reading pick-up and delivery terminal; exceptions filed by defendant were dismissed, and a final decree was entered on March 3, 1952 in accordance with the decree nisi. From that final decree defendants now appeal.

It is defendants' contention that the picketing carried on by them was solely for organizational purposes, that is, to persuade plaintiffs' non-union employees to join the Union. If such was indeed the fact the picketing was constitutionally protected and should not have been enjoined (*Carnegie-Illinois Steel Corporation* v. *United Steelworkers of America*, 353 Pa. 420, 430, 431, 45 A. 2d 857, 861). But if, on the other hand, the primary or paramount object was to [fol. 232] coerce plaintiffs, the employers, to commit a violation of section 6(c) of the Pennsylvania Labor Relations Act of June 1, 1937, P. L. 1168 (which provides that "It shall be an unfair labor practice for an employer . . . (c) By discrimination in regard to hire or tenure of employment, or any term or condition of employment to encourage or discourage membership in any labor organization;") such picketing would have been, by the law of the State, for an unlawful purpose and, if the State court had

jurisdiction in spite of the fact that plaintiffs were largely engaged in interstate commerce, it was proper to enjoin it: *Wilbank* v. *Chester & Delaware Counties Bartenders, Hotel and Restaurant Employees Union*, 360 Pa. 48, 60 A. 2d 21 (cert. den. 336 U. S. 945); *Phillips* v. *United Brotherhood of Carpenters and Joiners of America*, 362 Pa. 78, 66 A. 2d 227; *Carpenters and Joiners Union of America, Local No. 213*, v. *Ritter's Cafe*, 315 U. S. 722; *Giboney* v. *Empire Storage & Ice Company*, 336 U. S. 490; *Hughes* v. *Superior Court of California for Contra Costa County*, 339 U. S. 460; *International Brotherhood of Teamsters Union, Local 309*, v. *Hanke*, 339 U. S. 470; *Building Employees International Union, Local 262*, v. *Gazzam*, 339 U. S. 532.

Consideration cannot be given here to the merits of the controversy if the State courts lack jurisdiction in view of the fact that the Labor Management Relations Act—the so-called Taft-Hartley Act—of 1947, c. 120, 61 Stat. 136, 29 U. S. C. A. (Pocket Part) §141 et seq., also provides, §101, amendatory section 8(a)(3), as does our State Act, that "It shall be an unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization". It further provides, by an additional amendatory section 8(b)(2), that "It shall be an unfair labor practice for a labor organization or its agents . . . to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section . . . ." Thus it will be seen that the Act of Congress pro-
[fol. 233] hibits the same activity on the part of a labor organization in this respect as does the Pennsylvania Labor Relations Act, the only difference being that the Federal act would stamp this picketing as an unfair labor practice, whereas the State act does not so list it but our courts have declared it to be unlawful because aimed to coerce the employer into committing what the act does declare to be an unfair labor practice on his part.

The problem presented, therefore, is whether, under such circumstances, the Labor Management Relations Act constituted an absolute and complete preemption of the field so as to preclude State action, and the test of decision is the intention of Congress in that regard, that is, whether

it has manifested a willingness that the States should exercise concurrent jurisdiction in such a case. There is no express provision in the Federal legislation directly determining the question; Congress did not see fit therein expressly to declare a general policy or to state specific rules as to their effects on state regulation of various phases of labor relations over which the several states traditionally have exercised control: *International Union, U. A. W. A., A. F. of L., Local 232 v. Wisconsin Employment Relations Board*, 336 U. S. 245, 252. Therefore it has been held by the Supreme Court of the United States that there are many phases of labor relations affecting interstate commerce in which the equity powers of the State remain intact. Thus the State is not excluded from exercising its police power, and therefore, if picketing is attended by violence and threatens personal injury or property damage to the employer or to employees desiring to work, a State agency may prohibit such picketing: *Allen-Bradley Local No. 1111, United Electrical, Radio and Machine Workers of America, v. Wisconsin Employment Relations Board*, 315 U. S. 740. Where a union, in order to bring pressure on an employer, adopted a plan whereby union meetings of employees were called at irregular times during working hours, thereby causing a constant succes-[fol. 234] sion of work stoppages, it was held that neither the National Labor Relations Act—the so-called Wagner Act—c. 372, 49 Stat. 449, 29 U. S. C. A. § 151 et seq., nor the Labor Management Relations Act made any express delegation of power to the National Labor Relations Board to permit or forbid this particular union conduct from which an exclusion of state power could be implied: *International Union, U. A. W. A., A. F. of L., Local 232, v. Wisconsin Employment Relations Board*, 336 U. S. 245. Where an employee was discharged by an employer for refusal to pay union dues, in violation of a State statute which forbade enforcement of a maintenance-of-membership clause except under certain conditions not then fulfilled, it was held that the Labor Relations Board of the State could order the employer to cease and desist from giving effect to such clause, that such order was not in conflict with either the National Labor Relations Act or the Labor Management Relations Act, and that the certification of the union by

the National Board did not oust the jurisdiction of the State Board to prohibit practices forbidden by State law and not governed by Federal law: *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301. Our own court has held that a union may be enjoined in our State courts from acting in disregard of a collective bargaining agreement, notwithstanding the prohibition by the so-called Norris-LaGuardia Act, c. 90, 47 Stat. 70, 29 U. S. C. A. § 101 et seq. of the issuance of injunctions in labor disputes except on certain conditions, and notwithstanding also the fact that the Labor Management Relations Act provided that suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting interstate commerce might be brought in any district court of the United States: *General Building Contractors' Association v. Local Union No. 542*, 370 Pa. 73, 87 A. 2d 850.

On the other hand, it is equally well-settled that where there is actual conflict between the provisions of a State statute and the National Labor Relations Act in regard to regulation of labor union activities in an industry affecting interstate commerce, the State act must give way to the [fol. 235] Federal act: *Hill v. Florida*, 325 U. S. 538; *International Union of United Automobile Workers of America, C. I. O., v. O'Brien*, 339 U. S. 454; *Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Division 998, v. Wisconsin Employment Relations Board*, 340 U. S. 383. Where a State Labor Relations Board undertook, under a State act, to certify certain unions as collective bargaining representatives after the National Labor Relations Board had refused to certify such unions on the ground that to do so would obstruct the purposes of the National Labor Relations Act, it was held that such certification by the State Board was invalid as being in conflict with the Federal legislation, it being pointed out that two administrative bodies might produce a mischievous conflict if they attempted to exercise discretionary control over the same subject matter: *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767. Even where the National Labor Relations Board had not already undertaken to determine the appropriate collective bargaining representative, it was held that the

State Board had no jurisdiction to certify a certain union as such representative and therefore that its attempted certification was invalid: *La Crosse Telephone Corporation v. Wisconsin Employment Relations Board*, 336 U. S. 18. Our Court has similarly held, in *Pittsburgh Railways Company Substation Operators and Maintenance Employees' Case*, 357 Pa. 379, 54 A. 2d 891, that in view of the National Labor Relations Act the Pennsylvania Labor Relations Board did not have jurisdiction to entertain a petition to determine the collective bargaining agent for employees in an industry engaged in interstate commerce, even though the issue presented had not been before the National Board. And in *Pennsylvania Labor Relations Board v. Frank*, 362 Pa. 537, 67 A. 2d 78, where the Pennsylvania Labor Relations Board made an order on an employer to cease and desist from engaging in an unfair labor practice, in that he had coerced and interfered with his employees in the exercise of their rights of self-organization and collective bar-[fol. 236] gaining, it was held that, since the alleged unfair labor practice was prohibited also by the Labor Management Relations Act, the State Board was without jurisdiction to act even though the case had not been before the National Board.

In the light, then, of all these decisions, the question recurs whether Congress intended to exclude State action enjoining picketing which constituted an unfair labor practice on the part of a labor organization under the provisions of the Labor Management Relations Act, where such picketing was unlawful also under the State law.

Turning to the National Labor Relations Act of 1935—the Wagner Act—it appears that by section 10(a) of that Act, 29 U. S. C. A. § 160(a) the National Labor Relations Board was empowered to prevent any person from engaging in any unfair labor practice affecting interstate commerce, such power to be "*exclusive*" and not to be "affected by any other means of . . . prevention that has been or may be established by . . . law, or otherwise." By § 101, amendatory section 10(a) of the Labor Management Relations Act, 29 U. S. C. A. (Pocket Part) § 160(a), the provision that the power should be exclusive was eliminated, leaving the rest of the provision quoted intact, and adding a proviso that the Board was empowered to cede to any

State agency jurisdiction over cases in any industry (with certain exceptions not here relevant) even though such cases might involve labor disputes affecting interstate commerce, unless the provision of the State statute applicable to the determination of such cases was inconsistent with the corresponding provision of the Federal Act. The Labor Management Relations Act further provided, subsection (b), that when a charge of unfair labor practice was made to the National Board it should proceed to hear the complaint, expeditiously and if possible within ten days (subsection (1)), and it was given the power (subsection (e)) to petition a Federal court for enforcement of its order and for appropriate temporary relief or restraining order, any person aggrieved by the final order of the Board having the right to obtain a review thereof (subsection (f)); [fol 237] the Board was also given power (subsection (j)), when it issues a complaint of an unfair labor practice, to petition a district court of the United States for appropriate temporary relief or restraining order. It will thus be seen that the Labor Management Relations Act provided a complete remedy whenever there was a charge presented to it of an unfair labor practice, an immediate injunctive relief on petition of the Board, a final hearing by the Board, a review of such order in the Federal court. In our opinion such provisions for a comprehensive remedy precluded any State action by way of a different or additional remedy for the correction of the identical grievance.

It was pointed out in *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U.S. 301, 306, that the House Report commenting upon section 10(a) of the National Labor Relations Act said that "The Board is thus made the paramount agency for dealing with the unfair labor practices described in the bill," and that the Senate Report described the purpose of the section as "intended to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining." The court, therefore, concluded that "So far as appears from the Committee Reports . . . § 10(a) was designed, as its language declares, merely to

preclude conflict in the administration of remedies for the practices proscribed by § 8."

It seems to us unmistakable that it was the intention of Congress that, if an activity of a labor organization might be held to constitute one of the unfair labor practices enumerated in § 101, added supplementary section 5(b) of the Labor Management Relations Act, the power to determine that question and the action that should be taken in the matter were to be vested in a single agency, namely, the National Labor Relations Board, in order that thereby a uniform national policy might be developed and enforced. And it seems crystal clear that the purpose of the amendment by that act of section 10(a) of the National Labor [fol. 238] Relations Act, eliminating the term "exclusive", was for the purpose only of providing that the National Board *might*, if it saw fit in the case of certain industries, cede jurisdiction to a State agency where there was no inconsistency in the provisions of the State and Federal statutes. This proviso would seem to emphasize the power of the National Board to pass initially upon each such case, since it obviously implies that a State agency was to exercise jurisdiction only if ceded to it by the National Board. As pointed out in *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U.S. 301, 313, and followed in *Pennsylvania Labor Relations Board v. Frank*, 362 Pa. 537, 544, 67 A. 2d 78, 81, in regard to this proviso, if the State had authority so act, in the absence of such cession by the National Board, where State and Federal law had parallel provisions, adoption of the proviso would have been wholly unnecessary, since in the absence of an overlapping there would be no encroachment of State jurisdiction. Cf. *Amazon Cotton Mill Co. v. Textile Workers Union of America*, 167 F. 2d 183; *Geary of California v. Superior Court in and for Los Angeles County*, 33 Cal. 2d 119, 194 P. 2d 689; *Plankington Packing Co. v. Wisconsin Employment Relations Board*, 338 U.S. 953, reversing, per curiam, the judgment of the Supreme Court of Wisconsin reported in 255 Wis. 285, 38 N.W. 2d 686, where the State court had held that the State Board had jurisdiction over charges that a labor union and an employer were guilty of unfair labor practices.

It is our opinion, therefore, that since the plaintiff employers in the present case were engaged in interstate commerce, and the charge made by them was that the defendant Union was engaged in an activity which was unlawful under the law of the State but which also constituted an unfair labor practice under the provisions of the Labor Management Relations Act, and since that act provides an adequate and complete administrative remedy to prevent the continuance of such activity if the charge be substantiated, the Court of Common Pleas of Dauphin County had no jurisdiction to issue an injunction in this case against the defendant. Plaintiffs' remedy must be sought by them in [fol. 239] proceedings before the National Labor Relations Board, where an injunctive remedy, as previously pointed out, is available.

The decree is reversed at cost of appellees, and the bill is dismissed for want of jurisdiction.

[fol. 240] In the Supreme Court of Pennsylvania, Middle District

No. 26

Joseph Gaeuer and A. Joseph Gaeuer, Trading as Central Storage and Transfer Company, Appellees,

v.

Teamsters, Chauffeurs and Helpers, Local Union No. 776 (A. F. L.) Ed Long, President, Allen Kline, Business Manager, Its Other Officers and Agents, Appellants

Dissenting Opinion—Filed February 18, 1953

Bell, J.:

Plaintiffs, who engaged in the trucking and storage business in Harrisburg, sought and obtained an injunction restraining a union, its officers and agents, from peacefully picketing its platform facilities at a railroad station where the plaintiffs operated a local freight pick-up and delivery service. The picketing caused tremendous losses and ir-

irreparable damage to the plaintiffs. Some of plaintiffs' witnesses went into details.

The Courts of Pennsylvania have hitherto always taken jurisdiction in cases involving alleged irreparable damage or injury, including cases involving labor-industrial disputes, and have then decided each particular case on its own facts and merits. The basic reasons are (1) there is no adequate remedy at law to compensate for irreparable damage, and (2) irreparable damage cannot as a practical matter be prevented by the slow processes authorized under existing Congressional Acts.

Defendants contend that the picketing was peaceful and was conducted solely for organizational purposes, namely, to persuade plaintiffs' non-union employees to join the union. Peaceful picketing for a lawful purpose conducted in a lawful manner, is protected by both our State and Federal Courts: *Wortex Mills, Inc. v. Textile Workers Union*, [fol. 241] 369 Pa. 350, 85 A. 2d 851; *Thornhill v. Alabama*, 310 U. S. 88; *Carlson v. California*, 310 U. S. 106; *Cafeteria Employees Union v. Angelos*, 320 U. S. 293; *A. F. of L. v. Swing*, 312 U. S. 321; *Carnegie-Illinois Steel Corporation v. United Steelworkers of America*, 353 Pa. 430, 45 A. 2d 857. If the peaceful picketing was conducted solely for organizational purpose and in a lawful manner, I agree with the majority that it would not violate the Constitution or the laws of Pennsylvania and should not be enjoined. If on the other hand one of the objectives of the peaceful picketing was for an unlawful or illegal purpose or objective or, more particularly, was to coerce an employer to violate the Pennsylvania Labor Relations Act of June 1, 1937, as amended, then such picketing is subject to the jurisdiction of a Court of Equity and should be enjoined: *Hughes v. Superior Court of California*, 339 U. S. 460; *Building Service Union v. Gazzam*, 339 U. S. 532; *Gibbons v. Empire Storage & Ice Co.*, 336 U. S. 490; *Carpenters & Joiners Union v. Ritter's Cafe*, 315 U. S. 722; *International Brotherhood of Teamsters, Etc., Union, Local 309, et al. v. Hanke, et al.*, 339 U. S. 470; *Wortex Mills, Inc. v. Textile Workers Union*, 369 Pa., supra; *Wilbank v. Chester & Delaware Counties Bartenders Union*, 360 Pa. 48, 60 A. 2d 21; *Phillips v. United Brotherhood of Carpenters*, 362 Pa. 78, 66 A. 2d 227.

Where peaceful picketing causes irreparable damage and one of the objectives violates not only a statute of Pennsylvania but also a provision of the Taft-Hartley Act, the jurisdiction of State Courts has not been specifically limited by Congress or by the Supreme Court of the United States. If the provisions of the Taft-Hartley Act were invoked, it would be clear and unquestionable that Courts of Equity in Pennsylvania have always possessed and exercised and do still possess and exercise jurisdiction upon bills such as have been filed in the instant case, [illegible] irreparable damage and a violation of the Pennsylvania Labor Relations Act.

A Sovereign State should not be deprived of any of its [fol. 362] sovereign rights and powers except by the clear and express mandate of the Constitution or of Congress or of the Supreme Court of the United States. In the *Worlen Mills* case, 359 Pa., supra, we said (page 366): "It is well to recall that a State or other Sovereign has a paramount right and an irrepressible duty to maintain law and order, to protect life, liberty and property and to enact laws and police regulations for the protection and preservation of the safety, health and welfare of the people of the state or community: Carnegie Illinois Steel Co. v. U.S.W. of A., 352 Pa. 439, 456, 43 A. 2d 567; Westinghouse Electric Corp. v. United Electrical Workers, 353 Pa. 445, 461, 46 A. 2d 19.

"The power and duty of the State to take adequate steps to preserve the peace and protect the privacy, the lives and the property of its residents cannot be doubted': Thornhill v. Alabama, 310 U. S. 88, 105; Carlson v. California, 310 U.S. 106, 113. The sovereign powers of a State should be protected and maintained except where restricted by the Federal or State Constitutions and except where 'an "intention of Congress to preclude States from exerting their police powers [is] clearly manifested'": Napier v. Atlantic Coast Line R. Co., 272 U.S. 605, 611, and cases cited; Kelly v. Washington, 302 U.S. 1, 10; South Carolina Highway Dept. v. Barnwell Bros., 303 U.S. 177; H. P. Welch Co. v. New Hampshire, 306 U.S. 79, 85; Maurer v. Hamilton, 309 U.S. 598, 614; Watson v. Buck, supra; Allen-Bradley Local v. Wisconsin E.R. Board, 315 U.S. 740, 749."

The jurisdiction of State Courts to enjoin picketing, in-

finding peaceful picketing which is conducted in an unlawful manner or for an unlawful purpose, has been sustained by the Supreme Court of the United States in over a dozen recent cases, some of which are reviewed in *Wortex Mills* v. *Textile Workers*, 369 Pa., supra, and in the dissenting opinion in *American Brake Shoe Co.* v. *District Lodge 9*, — Pa. —, — A. 2d —.

Moreover, in *Auto Workers* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 253, Mr. Justice Jackson in sustaining an injunction against a union by a State Court of [fol. 243] Wisconsin in matters affecting interstate commerce, said: " . . . we have said of the National Labor Relations Act what is equally true of the Labor Management Relations Act of 1947, that 'Congress designedly left open an area for state control' and that the 'intention of Congress to exclude States from exercising their police power *must be clearly manifested*'." Allen Bradley Local v. Wisconsin Employment Relations Board, 315 U.S. 740, 750, 749. . . . While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. . . . This conduct is governable by the State or it is entirely ungoverned."

The Supreme Court of the United States has not specifically decided the question here involved and a number of decisions of that Court and of this Court indicate that the State Courts still have jurisdiction upon these or similar facts. Since the intention of Congress to exclude State Courts from exercising their traditional and long-established equity powers in this class of case is not clearly manifested I would uphold and sustain the jurisdiction of our State Courts.

For these reasons—without discussing or deciding the merits of the case—I dissent.

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*Italics throughout, ours.

[fol. 244] In the Supreme Court of Pennsylvania, Middle District

No. 26

[Title Omitted]

Petition for Reargument

To the Honorable, the Justices of said Court:

The petition of Joseph Garner and A. Joseph Garner, trading as Central Storage and Transfer Company, appellees, in the above case by their attorneys, David S. Kohn and James H. Bosser, respectfully prays your Honorable Court to grant them a rehearing for the following reasons.

1. The Court has reversed a well-considered final decree of the Court of Common Pleas of Dauphin County on the basis solely of affirmative answer to the question (sheet 7 of Court's opinion)

> ". . . whether Congress intended to exclude State action enjoining picketing which constituted an unfair labor practice on the part of a labor organization under the provisions of the Labor Management Relations Act, where such picketing was unlawful also under the State law."

Beyond that, the Court agrees that the Dauphin County Court correctly held that Congress has not preempted jurisdiction over every aspect of labor relations and that Congress has not preempted that portion of the field of labor relations relating to concerted activities, and the Court recognizes (sheet 4 of Court's opinion) that

> [fol. 245] ". . . there are many phases of labor relations affecting interstate commerce in which the equity powers of the State remain intact."

The Court further finds no inconsistency (sheets 5 to 7 of Court's opinion) between the policy of the Labor Management Relations Act and the final decree. Moreover the Court holds (sheets 3 and 4 of Court's opinion) that by section 8(b) (2) of the Labor Management Relations Act

> ". . . the Act of Congress prohibits the same activity on the part of a labor organization * * * to coerce

the employer into committing what the act does declare to be an unfair labor practice on his part."

At the same time, the Court holds (sheet 3 of Court's opinion) that

"... such picketing would have been, by the law of the State, for an unlawful purpose and, if the State court had jurisdiction in spite of the fact that plaintiffs were largely engaged in interstate commerce, it was proper to enjoin it."

2. To that narrowed jurisdictional question, deemed controlling by the Court, neither Congress nor the Supreme Court of the United States has undertaken to furnish an affirmative answer requiring a reversal of the final decree of an outstanding common pleas court. There is no disagreement expressed in the Court's opinion (see sheets 4 and 7 to 9) with the positive statement in the dissenting opinion (at sheet 2) of Mr. Justice Bell that

"Where peaceful picketing causes irreparable damage and one of its objectives violates not only a statute of Pennsylvania but also a provision of the Taft-Hartley Act, the jurisdiction of State Courts has not yet been specifically decided by Congress or by the Supreme Court of the United States."

There was related argument (after the submission on May 28, 1952 of this case) on November 13, 1952 before the Supreme Court of the United States in Montgomery Building and Construction Trades Council, et al. v. Ledbetter Erection Co., Inc., 73 S. Ct. 196, where the state court, we gather, acted on the basis of the Labor Management Relations Act itself, and not on the basis of state law, thus going considerably further than our case. In that case the Supreme Court on December 8, 1952, ordered that

[fol. 246]

"... the petition for certiorari must be dismissed as improvidently granted."

3. Relevant arguments presented to the Supreme Court of the United States in that most recent Ledbetter case were not presented to this Court in the briefs in this case nor in

the oral argument. For example, counsel for Ledbetter in oral argument (see 31 LRR 33) called attention to availability of customary remedies in state courts as shown by Congressional history of Section 10 (a).

4. The decision of the Supreme Court of Alabama in Montgomery Building & Construction Trades Council, et al. v. Ledbetter Erection Co., Inc., 57 So. 2d 112-122 (which became final March 6, 1952) was not called to the attention of this Court. As there (at page 117) pointed out, the conference agreement made clear the Congressional intention, under section 10(a) that

> "... when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies."

5. In reversing on the narrow basis that the applicability of section 8(b)2 conferred jurisdiction on the National Labor Relations Board which was exclusive under section 10(a), the Court did not have the benefit of detailed briefs and oral argument, developing the following significance of the language of section 10(a). Section 10(a) provides (29 U.S.C.A. sec. 160, pocket part) that

> [fol. 247] "The Board is empowered, as hereinafter provided, *to prevent* any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory *to cede to such agency* jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

6. The meaning of the power of an agency to prevent unfair labor practices was apparently not canvassed by the Court. The Court went back to section 10(a) of the National Labor Relations Act of 1935, where there was express provision that such power should be "exclusive" (sheet 7 of Court's opinion) and quoted (sheet 8 of Court's opinion) Committee Reports, in relation to that different, earlier legislation describing the National Board (italics supplied) as "the paramount agency for dealing with the unfair labor practices" and as the "paramount *administrative* or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining."

7. On the other hand, the meaning of such agency, administrative prevention has been developed (July 1952) in 27 New York University Law Review 468-477, and supports state court jurisdiction. It is there stated, at page 472:

> [fol. 248] "State jurisdiction to render common law relief to an individual harmed by tortious conduct which is also proscribed by the Taft-Hartley Act may be preserved by construing Section 10A as merely giving the NLRB the exclusive power to 'prevent' unfair labor practices. * * * The theory is that Section 10A should be directed against state administrative agencies whose wide discretionary powers allow for conflict with national policies, but that courts administering private rights should not be precluded as a court operates in the narrow scope of the fact situation immediately before it and can only apply the existing law. Thus, preservation of common law remedies for the individual will not infringe on a national labor policy * * * otherwise the Taft-Hartley Act would create a possible vacuum * * * increased by the discretionary power of the NLRB to refuse jurisdiction."

8. Such fundamental consideration of what it was that was exclusive, or not, was completely overlooked by this Court, in its brief discussion of the effect of the deletion by Congress of the word "exclusive" in relation to the Board's power. Since Congress in 1935 made exclusive in the Board

only administrative agency power to prevent unfair labor practices in relation to development of the Federal American law regarding collective bargaining, the 1947 amendment deleting the word "exclusive" obviously expressed no Congressional intention to be more exclusive. Congress did not thereby eliminate the power which state courts had continued to exercise to adjudicate fact situations in which individuals had been harmed by conduct tortious under state law. This consideration of the precise Congressional language will eliminate the glaring inconsistency between the Court's rationale and the Court's absolutely correct insistence (sheet 4 of Court's opinion) that

> ". . . the State is not excluded from exercising its power."

See Petro, State Jurisdiction to Regulate Violent Picketing, 3 Labor Law Journal 3 (1952).

[fol. 249] 9. As carefully analyzed by Petro, State Jurisdiction to Regulate Violent Picketing, 3 Labor Law Journal 3, 72:

> ". . . this word 'prevent' may be the key at once to plumbing the Congressional intent in Section 10(a) and to reaching some reasonable conclusion as to the scope of the section. When used in connection with administrative action, even of the 'quasi-judicial' type, the term 'prevent' has connotations different from those surrounding our ordinary concepts of enforcement of legislation through traditional judicial process, and certainly different from those which might apply in using the word 'prevent' to describe what the common law has classically done. * * * the NLRB has always been thought of as an agency conceived to effectuate uniformly over the nation a broad national policy. * * * With these conceptions one must contrast the more narrow concept that a traditional court in the ordinary common law case only 'finds the law,' and in a modest case-by-case way, applies that law to correct the harm done to a legally protected interest. * * *
>
> "The importance of these observations lies in their implicit suggestion that Section 10(a) does not pre-

clude traditional court action, based on common law or pre-existing state statutes, merely because such action may take place in a case involving conduct which happens to amount also to an NLRA unfair labor practice."

10. The foregoing analysis is confirmed by additional language in section 10(a) supporting state court jurisdiction to adjudicate. The Court indeed referred to this additional language as explaining Congressional elimination of the term "exclusive" (sheet 9 of Court's opinion) and said

> ". . . the National Board *might*, if it saw fit in the case of certain industries, cede jurisdiction to a State agency where there was no inconsistency in the provisions of the State and Federal Statutes. This proviso would seem to emphasize the power of the National Board to pass initially upon each such case, since it obviously implies that a State agency was to exercise jurisdiction only if ceded to it by the National Board."

But again the Court completely overlooked the use by Congress of the word "agency." Counsel, too, had not called the attention of the Court to the legislative history spelling out the scope of the word "agency" as relating to state labor relations boards. In Senate Report No. 105, 80th [fol. 250] Congress, 1st Session (accompanying S. 1126, or the Federal Labor Relations Act of 1947 as it was at the moment called), at page 26, "agency" is expressly equated with a state administrative board, the Report states,

> "Section 10(a): The proviso which has been added to this subsection permits the National Board to allow State labor-relations boards to take final jurisdiction of cases * * * provided the State statute conforms to national policy."

Provision was thus made for ceding jurisdiction to a State "agency" or labor relations board because the jurisdiction of the National Board was exclusive of state board jurisdiction under the Bethlehem case, see La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U. S.

18, 25-27, 69 S. Ct. 379, 382-383 and note 11. Where, as explained by Mr. Justice Douglas in the La Crosse case,

> "Both the state and the federal statutes had laid hold of the same relationship and had provided different standards for its regulation * * * we thought the situation too fraught with potential conflict to permit the intrusion of the state agency * * *."

No such "real potentials of conflict" ever existed in case-by-case adjudication of tort cases, necessarily consistently with federal legislation. There was no proviso for ceding jurisdiction to state courts. None was needed. State court jurisdiction had never been excluded. The limited terms of the proviso found in section 10(a), restricted to state "agency" jurisdiction over any industry, recognized the uniform practice in the state courts to adjudicate, under consistent state law, tort cases involving employers and employees. When thus understood, the additional language in section 10(a), which the Court deemed significant, requires a reconsideration of the Court's opinion and resultant order.

11. Congress in 1947 was well aware that it was creating administrative agency remedies through the National [fol. 251] Board that duplicated local court remedies existing under state law. That was made the basis for argument against creating the administrative agency remedies; but they were created as desirable duplicates. There was no thought that the duplicates ipso facto excluded the state court remedies that were necessarily presupposed by the very argument that they were duplicates.

This clearly appears in the Labor Management Relations Act debates on the amendments adding unfair labor practices on the part of labor organizations: 93 Cong. Rec. 4560-4561. As stated by Senator Taft (93 Cong. Rec. 4562, 4563)

> "Like the Senator from Minnesota, I am not very fond of the administrative procedure, but it is believed that if we retain the unfair labor practice procedure against employers, an effort should be made to bring about some measure of equality by defining unfair labor practices on the part of labor unions. * * *

". . . if a case is filed alleging that the union threatens a man personally, or sends threatening letters to him, saying it is going to beat him and his family if he does not join the union, and the Board then finds that that was done, and issues a cease-and-desist order, it may be it would encourage a district attorney, or some of the local courts, to take unwarranted action. But in such a case the union ought to be punished. An injunction ought to be issued to prevent such a procedure. * * * I wish to point out that the provisions agreed to by the committee covering unfair labor practices on the part of labor unions also might duplicate to some extent that State law."

Senator Taft clearly distinguished the continued power of a local state court to do its duty and the continued lack of power of a federal court under the Norris-LaGuardia Act in issuing injunctions. Senator Taft recognized the continuing jurisdiction of a local state court:

[fol. 252] Mr. Morse. I believe with the Senator that that sort of action should be stopped. It should be stopped through State laws and not through a Federal law. The point I am seeking to make is that with this amendment on the statute books I think it will be found that the very filing of the allegations will cause courts to proceed to issue injunctions. That is why I say I think it will be a tremendous handicap to legitimate strikes and legitimate organizational activities.

"Mr. Taft. The bill does not in any way change the right of the Federal court to issue an injunction. The Senator is suggesting that the enactment of this proposed legislation will bring about a condition which will compel the local court to do its duty. If that will be the result, I believe it will be a beneficial effect. * * * to some extent the measure may be duplicating the remedy existing under State law. But that, in my opinion, is no valid argument."

12. A reappraisal of section 10(a) of the Labor Management Relations Act will avoid the serious consequences of mistakenly imputing to the Eightieth Congress the amputation of a practical remedy for traditional torts.

Wherefore, petitioners respectfully seek permission to argue such additional or new matters bearing so forcefully on the question whether Congress intended to exclude State court action enjoining picketing which constituted an unfair labor practice on the part of a labor organization under the provisions of the Labor Management Relations Act, where such picketing was unlawful also under the State law.

David S. Kohn, McNees, Wallace and Nurick, of Counsel. James H. Booser, Counsel for Appellees.

[fol. 253] In the Supreme Court of Pennsylvania
(Middle District)

No. 36

[Title omitted]

Order Denying Rehearing—March 24, 1953

The following order of court appears on the back of the foregoing petition for reargument: "Petition Denied per Curiam."

[fol. 254] In the Supreme Court of Pennsylvania
Middle District

No. 36

[Title omitted]

Praecipe for Transcript of Record

To the Prothonotary of the Said Court:

Kindly prepare and certify to the Supreme Court of the United States the following papers:

(1) Docket entries;
(2) The printed record as it appeared at the time the above case was argued in the Pennsylvania Supreme Court;
(3) The majority opinion of the Supreme Court;

(4) The dissenting opinion filed in the said case;
(5) The petition for re-argument and order thereon.

David S. Kohn, McNees, Wallace & Nurick, By James H. Beesar, Attorneys for Appellees.

Acknowledgement of Services of Foregoing Pleadings—Omitted in Printing

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[fols. 255 256] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 257] Supreme Court of the United States, October Term, 1952

No. 773

Joseph Gardner and A. Joseph Gardner, Trading as Central Storage and Transfer Company, Petitioners,

vs.

Teamsters, Chauffeurs and Helpers Local Union No. 776 (A.F.L.), et al.

Order Allowing Certiorari—Filed June 15, 1953.

The petition herein for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania, Middle District, is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



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HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1952~~ 1953

No. ~~773~~ 56

JOSEPH GARNER AND A. JOSEPH GARNER, TRADING AS CENTRAL STORAGE AND TRANSFER COMPANY,
Petitioners,

vs.

TEAMSTERS, CHAUFFEURS AND HELPERS, LOCAL UNION NO. 776 (A. F. L.) ED LONG, PRESIDENT, ALLEN KLINE, BUSINESS MANAGER, ITS OTHER OFFICERS AND AGENTS

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

DAVID S. KOHN,
JAMES H. BOOSER,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 773

JOSEPH GARNER AND A. JOSEPH GARNER, TRADING AS CENTRAL STORAGE AND TRANSFER COMPANY,

Petitioners,

vs.

TEAMSTERS, CHAUFFEURS AND HELPERS, LOCAL UNION NO. 776 (A. F. L.) ED LONG, PRESIDENT, ALLEN KLINE, BUSINESS MANAGER, ITS OTHER OFFICERS AND AGENTS

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Petitioners Joseph Garner and A. Joseph Garner, trading as Central Storage and Transfer Company (hereinafter referred to as Central), pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, entered in the above-entitled case on February 13, 1953.

Opinions Below

The opinion of the trial court, the Court of Common Pleas of Dauphin County, is reported in Volume 62 of the Dauphin County Reporter (advance sheet No. 41 of June 4,

1952) at pages 339-366. The opinion of the Supreme Court of Pennsylvania is reported in 373 Pa. (advance sheet No. 14 of April 3, 1953) at pages 19-30 and the dissenting opinion at pages 30-34.

Jurisdiction

The jurisdiction of this court is invoked under 28 U. S. C., sec. 1257(3), permitting review by certiorari of a case involving the construction of a federal statute: *Murray* v. *Joe Gerrick & Co., et al.*, 291 U. S. 315, 316. 54 S. Ct. 432, 433; Stern and Gressman, Supreme Court Practice (1950) page 56.

The Supreme Court of Pennsylvania, the highest court of the state in which a decision could be had, by its judgment of February 13, 1953, reversed the trial court's final decree granting a preliminary injunction and "dismissed for want of jurisdiction" Central's bill in equity for the sole reason that (R. 238)

> "It is our opinion, therefore, that, since the plaintiff employers in the present case were engaged in interstate commerce, and the charge made by them was that the defendant Union was engaged in an activity which was unlawful under the law of the State but which also constituted an unfair labor practice under the provisions of the Labor Management Relations Act, and since that act provides an adequate and complete administrative remedy to prevent the continuance of such activity if the charge be substantiated, the Court of Common Pleas of Dauphin County had no jurisdiction to issue an injunction in this case against the defendant."

This federal question was the only question decided. The respondents had raised this question in the court of first instance, the Court of Common Pleas of Dauphin County, by their additional exceptions 16, 17 and 18 (R. 108, 109) of July 27, 1949, to the preliminary in-

junction and decree of June 17, 1949, and by numerous exceptions, such as exceptions 26, 27 (R. 210, 211), 43 (R. 216), and 50 (R. 218) to the adjudication and decree nisi of September 4, 1951. The court of first instance (R. 181-193) considered at length this question "did Congress vest in the National Labor Relations Board exclusive jurisdiction" and concluded that:

> ". . . we hold that primary jurisdiction over the conduct of the Union here in question did not vest in the NLRB under either section 10(a), section 7 or any other provision of the Taft-Hartley Act."

The court of first instance, after hearing testimony offered by both parties, and making findings of fact, entered a final decree (R. 228, 202) permanently enjoining picketing or patrolling of petitioners' 9th and Market Street terminal in Harrisburg, Pennsylvania, when (R. 179) "deliberately designed to coerce Central * * * to compel * * * its employees to become members" of respondent Union.

Such final injunctive relief was reversed by the Supreme Court of Pennsylvania solely for lack of jurisdiction under its construction of the Labor Management Relations Act, 1947, as proscribing as an unfair labor practice under section 8(b)(2), 29 U. S. C. A., sec. 158 pocket part, the respondents' conduct (R. 235-236) and as therefore conferring upon the National Labor Relations Board (R. 238) under section 10(a) as amended, exclusive jurisdiction.

Question Presented

Does the Labor Management Relations Act, 1947, oust the jurisdiction of a state court to enjoin picketing for the purpose of coercing an employer to compel its employees to become members of the picketing union, where the injunction was based upon state legislation which made that purpose unlawful?

Statute Involved

The Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. A., sec. 141 (petitioners ask leave to refrain from reprinting at this point its numerous provisions which may have some bearing on the argument on the merits) provides, most pertinently, in sections 10(a) and 8(b)(2), in part as follows:

29 U.S.C.A., sec. 160 10(a), 61 Stat. 146

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *"

29 U.S.C.A., sec. 158 8(b)(2), 61 Stat. 141

> "It shall be an unfair labor practice for a labor organization or its agents * * * to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section * * *" (i.e., as subsection (a)(3) provides: "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization")

Statement

Central (as we refer for convenience to petitioners, who are partners trading as Central Storage and Transfer Company) is engaged in the trucking and storage business in Harrisburg. Central performs local freight pickup and delivery service (R. 171) for the Reading Railroad Company and its trucking division, the Reading Transportation Company (as well as some fifteen other trucking firms) from a

platform at the rear of the Reading Railroad Freight Station at 9th and Market Streets. Central (R. 172) employs 24 persons as truckers, helpers and platform men, 4 of its employees being members of respondent Union. Central (R. 173) has never objected, and does not presently object, to any of its employees joining the Union.

On June 7, 1949, rotating pickets, two at a time, none of whom was an employee of Central, were placed (R. 174) by respondent Union, one in front of and the other at the entrance to Central's Reading loading platform. The pickets carried signs bearing the following legend:

> "Local 776 Teamsters Union (A. F. of L.) wants Employees of Central Storage & Transfer Co. to join them to gain union wages, hours and working conditions."

This picketing was conducted at all times in an orderly and peaceful manner. Neither then nor at any other time (R. 175) has there been any controversy or labor dispute between Central and its employees, none of whom were on strike. While the picketing continued union truck drivers and helpers (R. 176) employed by the Reading Transportation Company and other interchange carriers refused to cross the picket line; as the bulk of Central's operations was with unionized trucking concerns the consequence was that its local business fell off 95%, causing a loss to it of between $400 and $500 per day, in addition to which (R. 178) it stood to have its contract with the Reading Transportation Company cancelled and its terminal facilities with the Reading Railroad Company vacated. The foregoing facts were found by the trial court (R. 171-179) and appear in the opinion of the Pennsylvania Supreme Court (R. 232-233).

Central, on June 9, 1949 (R. 1, 4) brought a bill in equity against respondents to enjoin the picketing, and on June 17, 1949 (R. 1), the trial court (the Court of Common Pleas of Dauphin County, Pennsylvania), after hearing testimony (R. 13-101) offered by both sides, decreed (R. 102) that a preliminary injunction should issue as prayed for. Subsequently additional testimony was taken on final (R. 112-131, R. 137-166) hearing, and, on September 4, 1951 (R. 2, R. 169-202) the court entered a decree nisi enjoining and restraining respondents from picketing Central's Reading pickup and delivery terminal; exceptions (R. 203-221) filed by respondents were dismissed (R. 2-3, R. 221-228) and a final decree was entered in accordance with the decree nisi on March 3, 1952.

From that final decree respondents appealed to the Supreme Court of Pennsylvania which, without considering the merits of the controversy, reversed the decree and dismissed Central's bill for lack of jurisdiction in view of sections 8(b)(2) and 10(a) of the Labor Management Relations Act, 1947. The Supreme Court of Pennsylvania, one justice dissenting, held that the federal legislation vested exclusive jurisdiction in the National Labor Relations Board.

The Supreme Court of Pennsylvania handed down its decision, reversing the final decree, on February 13, 1953. On February 20 Central filed its petition for re-argument, well within the ten-day period, as prescribed in Rules 69 and 73 of the Supreme Court of Pennsylvania. On March 24, 1953, the Supreme Court of Pennsylvania denied Central's petition.

On March 31, 1953, Central filed its praecipe for certification of the record to the Supreme Court of the United States, and promptly thereafter, upon completion of such certification by the prothonotary, lodged the certified record

with the Supreme Court of the United States and filed this petition for a writ of certiorari well within the "ninety days" permitted by statute (28 U.S.C.A. sec. 2101(c)) from the time when, on March 24, 1953, the petition for reargument was disposed of, and the judgment became final for purposes of United States Supreme Court review: Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States (1936), section 354, page 720; see *Department of Banking, State of Nebraska* v. *Pink*, 317 U. S. 264, 266, 63 S. Ct. 233, 234; see *Gypsy Oil Co.* v. *Escoe*, 275 U. S. 498, 48 S. Ct. 112, 113.

Specification of Errors to Be Urged

The Supreme Court of Pennsylvania erred:

1. In holding that the Court of Common Pleas of Dauphin County was without jurisdiction to issue an injunction under state law against picketing for the unlawful purpose of coercing the employer to compel its employees to become members of the picketing labor organization.

2. In holding that section 8(b)(2) of the Labor Management Relations Act, 1947) applied to the facts found.

3. In holding that the Labor Management Relations Act, 1947, conferred exclusive jurisdiction upon the National Labor Relations Board.

4. In reversing the final decree of the trial court.

Reasons for Granting Writ

1. The decision of the Supreme Court of Pennsylvania is in direct conflict with the decision of the Supreme Court of Alabama in *Montgomery Building & Construction Trades Council, et al.* v. *Ledbetter Erection Co., Inc.*, 256 Ala. 678, 57 So. 2d 112, rehearing denied, 256 Ala. 689, 57 So. 2d 121, as well as with the final judgment (relied upon by the court of first instance, R. 189-192) of the Supreme Court of Mis-

souri in *Kincaid-Webber Motor Co.* v. *Quinn*, 241 S. W. (2d) 886 (Mo. 1951). Such a conflict of decisions between the highest courts of two or more states on the construction of a federal statute is valid ground for the issuance of the writ. Compare *Williams* v. *Cedartown Textiles*, 208 Ga. 659, 68 S. E. 2d 705, 708 (1952) recognizing "concurrent remedies" and *Goodwin's, Inc.* v. *Hagedorn*, 303 N. Y. 300, 101 N. E. 2d 697, where Loughran, J. stated:

> "Nor does the Federal Labor Management Relations Act (as we see it) disable our State courts from acting in the circumstances of this case."

The decision of the Supreme Court of Pennsylvania is also in conflict with the most recent decision of March 10, 1953, of the Supreme Court of California in *Sommer* v. *Metal Trades Council*, 53 American Labor Cases 509. A final construction of the statute by this court will "settle an important question" as to the power and jurisdiction of a state court: see *Baltimore National Bank* v. *State Tax Commission of Maryland*, 297 U. S. 209, 211, 56 S. Ct. 417, 418.

2. It is in the public interest for this Court to review and resolve an important and unsettled question of the construction of the Labor Management Relations Act, 1947. Certiorari has been granted in a substantial number of cases, as in *Federal Land Bank of St. Louis* v. *Priddy*, 295 U. S. 229, 230, 55 S. Ct. 705, 706, even in the absence of any conflict of decisions, to review a decision of the highest court of a state regarding the construction of a federal statute. The extent to which the Labor Management Relations Act, 1947, permits continued exercise of state court jurisdiction to enjoin or adjudicate acts, whether peaceable or violent, contrary to state legislation or common law, is of vital significance to substantial cross-sections of the public in many states. A recent illustration is found in *The Richman*

Brothers Company v. *Amalgamated Clothing Workers of America*, No. 641,936 in the Court of Common Pleas of Cuyahoga County, Ohio, where on April 14, 1953, that court enjoined picketing "for the unlawful purpose of forcing an employer to force that unionization of its help which for years that same help has refused at the behest of Amalgamated" and said:

> "The within hearing has been delayed for five months so that the Amalgamated could carry to the limit its claim that States or State Courts have no longer any right to assume jurisdiction over its within activities. * * * We hold they are amenable to our State laws and the jurisdiction of our State Courts."

3. The decision of the Pennsylvania Supreme Court is believed to be erroneous. Some of the reasons appear in the petition for re-argument (R. 246-250), in the dissenting opinion of Mr. Justice Bell (R. 238-241), in Petro, Participation by the States in the Enforcement and Development of National Labor Policy, New York University Fifth Annual Conference on Labor (1952), pages 1-76, and in the cases referred to under our first reason. Congress has not clearly manifested an exclusion of the state power sought to be exercised in this case: *International Union* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, 253, 69 S. Ct. 516, 521.

4. This court granted certiorari in *Montgomery Building and Construction Trades Council, et al.* v. *Ledbetter Erection Company, Inc.*, 343 U. S. 962, 72 S. Ct. 1061. That petition for certiorari was later dismissed as improvidently granted, *Montgomery Building and Construction Trades Council, et al.* v. *Ledbetter Erection Co., Inc.*, — U. S. —, 73 S. Ct. 196, because the state court injunction challenged under the Labor Management Relations Act, 1947, was a temporary injunction. The present petition for review of

a final judgment presents a related question of state court jurisdiction to enforce the provisions of a state statute, consistent with the federal policy enacted in 1947, making the defined union activity unlawful and subject to restraint.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID S. KOHN,
JAMES H. BOOKER,
Counsel for Petitioners.